GSA

MAR 2 2004

GSA Office of Governmentwide Policy

MEMORANDUM FOR RONALD POUSSARD
DIRECTOR
DEFENSE ACQUISITION REGULATIONS COUNCIL

FROM: RODNEY P. LANTIER, DIRECTOR
REGULATORY AND FEDERAL ASSISTANCE
PUBLICATIONS DIVISION

SUBJECT: FAR Case 2002-004, Labor Standards for Contracts Involving Construction

Attached are comments received on the subject FAR case published at 68 FR 74404; December 23, 2003. The comment closing date was February 23, 2004.

Response Number	Date Received	Comment Date	Commenter
2002-004-1	02/02/04	02/02/04	Jeffrey Saylor (DOL)
2002-004-3	02/13/04	02/13/04	Robert N. Hoyt
2002-004-4	02/14/04	02/14/04	Andy Kurth
2002-004-5	02/16/04	02/16/04	Mark Smith
2002-004-6	02/16/04	02/16/04	Thomas H. Turner
2002-004-7	02/16/04	02/16/04	Michael Coscia
2002-004-8	02/16/04	02/16/04	T.J. Carmody
2002-004-9	02/16/04	02/16/04	Jay Valentyn

U.S. General Services Administration
1800 F Street, NW
Washington, DC 20405-0002
www.gsa.gov

Response Number	Date Received	Comment Date	Commenter
2002-004-10	02/16/04	02/16/04	Charles H. Dennis, Jr.
2002-004-11	02/16/04	02/16/04	Daniel R. Brodbeck
2002-004-12	02/16/04	02/16/04	Henry Parish
2002-004-13	02/16/04	02/16/04	Terry E. Bobell
2002-004-14	02/16/04	02/16/04	Douglas P. Seaton
2002-004-15	02/16/04	02/16/04	Mike Jansen
2002-004-16	02/17/04	02/17/04	Tammy Meyers
2002-004-17	02/17/04	02/17/04	Stephen R. York
2002-004-18	02/17/04	02/16/04	Jamie Wilkinson
2002-004-19	02/17/04	02/17/04	John Freitag
2002-004-20	02/17/04	02/17/04	Andrew W. Booth
2002-004-21	02/17/04	02/17/04	Jeffredy W. Roth
2002-004-22	02/17/04	02/17/04	Terry Shorb
2002-004-23	02/17/04	02/17/04	Mike Krueger
2002-004-24	02/17/04	02/17/04	Joe Pember
2002-004-25	02/17/04	02/17/04	Larry Pember
2002-004-26	02/17/04	02/17/04	David L. Wilson
2002-004-27	02/18/04	02/18/04	Tim Jone
2002-004-28	02/18/04	02/18/04	Bob Pitts
2002-004-29	02/18/04	02/18/04	Stephen R. York
2002-004-30	02/18/04	02/18/04	Mike Quigley

Response Number	Date Received	Comment Date	Commenter
2002-004-31	02/18/04	02/18/04	Enertech, Inc.
2002-004-32	02/18/04	02/18/04	Mike Everett
2002-004-33	02/18/04	02/18/04	QN Electric, Inc.
2002-004-34	02/18/04	02/18/04	Real Mechanical, Inc.
2002-004-35	02/18/04	02/18/04	Rich Enyeart
2002-004-36	02/18/04	02/18/04	Electric General Corporation
2002-004-37	02/18/04	02/18/04	TECO, Inc.
2002-004-38	02/18/04	02/18/04	En-Tice-Ment Enterprises, Inc.
2002-004-39	02/19/04	02/19/04	Matthew C. Connors
2002-004-40	20/20/04	02/20/04	Cathy Stewart
2002-004-41	02/21/04	02/21/04	Brett West
2002-004-42	02/21/04	02/21/04	Len Trovero
2002-004-43	02/21/04	02/21/04	Mike Sheppard
2002-004-44	02/21/04	02/21/04	Saebra Walljasper
2002-004-45	02/21/04	02/21/04	Kevin Endress
2002-004-46	02/21/04	02/21/04	James Whitesell
2002-004-47	02/22/04	02/22/04	Brad Walker
2002-004-48	02/22/04	02/22/04	Jim R. Ulm
2002-004-49	02/22/04	02/22/04	Ben Varnes

Response Number	Date Received	Comment Date	Commenter
2002-004-50	02/22/04	02/22/04	Jeff Doubet
2002-004-51	02/19/04	02/19/04	Richard E. Jones
2002-004-52	02/19/04	02/19/04	Daniel S. Buckley
2002-004-53	02/22/04	02/22/04	Christopher Gibbs
2002-004-54	02/22/04	02/22/04	Doug Baer
2002-004-55	02/22/04	02/22/04	Robert Ulm
2002-004-56	02/22/04	02/22/04	Reta Ulm
2002-004-57	02/22/04	02/22/04	Matthew Ulm
2002-004-58	02/23/04	02/23/04	Loni Grosenbach
2002-004-59	02/23/04	02/14/04	Audubon-Exira Ready Mix, Inc.
2002-004-60	02/23/04	02/20/04	ABC
2002-004-61	02/23/04	02/19/04	Robert J. Martin
2002-004-62	02/23/04	02/23/04	The Eastern Sales & Engineering Co.
2002-004-63	02/23/04	02/23/04	ABA
2002-004-64	02/23/04	02/23/04	International Union of Operating Engineers
2002-004-65	02/23/04	02/23/04	LIUNA
2002-004-66	02/23/04	02/23/04	Merit Mechanical Inc.
2002-004-67	02/23/04	02/23/04	Marty Clinch

Response Number	Date Received	Comment Date	Commenter
2002-004-68	02/23/04	02/23/04	Abell Elevtor International, Inc.
2002-004-69	02/24/04	No Date	Wilson & Buist, Inc.
2002-004-70	02/24/04	No Date	NOTCH
2002-004-71	02/24/04	02/16/04	SOTA
2002-004-72	02/24/04	02/18/04	Billick & Sons, Inc.
2002-004-73	02/24/04	02/18/04	Schultz Bros. Electric Co.
2002-004-74	02/24/04	02/17/04	Clock Electric, Inc.
2002-004-75	02/24/04	No Date	Jim Plunkett
2002-004-76	02/24/04	02/16/04	EGC
2002-004-77	02/24/04	02/1704	Doherty, Inc.
2002-004-78	02/24/04	02/17/04	Winandy Greenhouse Co., Inc.
2002-004-79	02/24/04	02/16/04	hth Companies, Inc.
2002-004-80	02/24/04	04/16/04	Wolgast Coporation
2002-004-81	02/24/04	02/16/04	Gropp Electric, Inc.
2002-004-82	02/24/04	02/24/04	Dan Silverthorn
2002-004-83	02/25/04	02/16/04	Cedar Lake Electric, Inc.
2002-004-84	02/25/04	02/16/04	Ferguson Const., Co.
2002-004-85	02/25/04	02/16/04	Two J's Industries
2002-004-86	02/25/04	02/16/04	Two J's Industries

Response Number	Date Received	Comment Date	Commenter
2002-004-87	02/25/04	02/16/04	SWAM Electric Co, Inc.
2002-004-88	02/25/04	02/17/04	Southern Electric Services
2002-004-89	02/25/04	02/18/04	Dave's Electric Inc.
2002-004-90	02/25/04	02/16/04	ARD Contracting, Inc.
2002-004-91	02/25/04	02/16/04	ABC
2002-004-92	02/25/04	02/16/04	Clackamas Const., Inc.
2002-004-93	02/25/04	02/16/04	GAYLOR
2002-004-94	02/25/04	No Date	LARSON
2002-004-95	02/25/04	02/16/04	CRECO
2002-004-96	02/25/04	No Date	LARSON
2002-004-97	02/25/04	02/16/04	Laverdiere
2002-004-98	02/25/04	02/16/04	County Environment Company
2002-004-99	02/25/04	02/16/04	General Mechanic
2002-004-100	02/25/04	02/16/04	ABC
2002-004-101	02/25/04	02/16/04	H & S Inc.
2002-004-102	02/25/04	02/17/04	OCE
2002-004-103	02/25/04	02/16/04	Leonaed A. Kraus Co., Inc
2002-004-104	02/25/04	02/16/04	Hudak's Asbestos Removal, Inc.

Response Number	Date Received	Comment Date	Commenter
2002-004-105	02/25/04	02/16/04	Hudak's Insulation, Inc.
2002-004-106	02/25/04	02/16/04	Wittburn Enterprises, Inc.
2002-004-107	02/25/04	02/16/04	MJ Mechanical Services, Inc.
2002-004-108	02/25/04	02/16/04	THR General Contractors
2002-004-109	02/25/04	02/16/04	Whitta Construction
2002-004-110	02/25/04	02/21604	Overland Constructors, Inc.
2002-004-111	02/25/04	02/14/04	CMW
2002-004-112	02/25/04	02/16/04	Kessel Construction Inc.
2002-004-113	02/25/04	02/16/04	J. Wilkinson, Inc.
2002-004-114	02/25/04	02/16/04	Crites Electric Inc.
2002-004-115	02/25/04	02/16/04	County Insulation Co.
2002-004-116	02/25/04	02/18/04	Cumberland Valley Chapter
2002-004-117	02/25/04	No Date	Perram Electric, Inc.
2002-004-118	02/25/04	02/17/04	APWC
2002-004-119	02/25/04	02/17/04	Avens
2002-004-120	02/25/04	No Date	TEFCO
2002-004-121	02/25/04	02/16/04	Parish Corporation

Response Number	Date Received	Comment Date	Commenter
2002-004-122	02/25/04	02/16/04	Pinkerton & Laws Inc.
2002-004-123	02/25/04	02/16/04	Hudak's Const, Scv. Inc.
2002-004-124	02/25/04	02/17/04	Jim Fischer, Inc.
2002-004-125	02/25/04	02/17/04	Jim Fischer, Inc.
2002-004-126	02/25/04	02/17/04	Jim Fischer, Inc.
2002-004-127	02/25/04	02/17/04	Jim Fischer, Inc.
2002-004-128	02/25/04	No Date	Town Center Electric, Inc.
2002-004-129	02/25/04	No Date	Town Center Electric, Inc.
2002-004-130	02/25/04	No Date	Town Center Electric, Inc.
2002-004-131	02/25/04	02/16/04	J.W. Wilde Mechanical, Inc.
2002-004-132	02/25/04	02/18/04	Bay Mechanical & Electrical Corp.
2002-004-133	02/26/04	02/23/04	AGA
2002-004-134	02/26/04	02/19/04	Edgeline Electrtic Corp
2002-004-135	02/26/04	02/17/04	Carpenter Mountjoy & Bressler
2002-004-136	02/26/04	02/18/04	VASKO Electric, Inc.
2002-004-137	02/26/04	02/19/04	Wouchy Maloney & Co.,
2002-004-138	02/26/04	02/17/04	AJ Kirkwood & Assoc, Inc.

Response Number	Date Received	Comment Date	Commenter
2002-004-139	02/26/04	02/20/04	WARGO
2002-004-140	02/26/04	02/13/04	NOVA
2002-004-141	02/26/04	No Date	Southern Tier Sheet Metal Contractors Assoc.42
2002-004-142	02/26/04	02/20/04	WARGO
2002-004-143	02/26/04	02/20/04	WARGO
2002-004-144	02/26/04	0219/04	WARGO
2002-004-145	02/26/04	02/19/04	Continental Plumbing, Inc.

Attachments

2002-004-1

"Saylor, Jeffrey - OASAM" <Saylor.Jeffrey@DOL.GOV>

02/02/2004 11:29 AM

To: "'farcase.2002-004@gsa.gov'" <farcase.2002-004@gsa.gov>
cc: "Segaar, Ruurd - SOL" <Segaar.Ruurd@DOL.GOV>, "Newman, Ford - SOL" <Newman.Ford@DOL.GOV>
Subject: FAR Proposed Rule 2002-004, Labor Standards for Contracts Involving Construction.

<<FAR Proposal Comments - rev.doc>>

The attached comments were submitted to me by the DOL's Solicitor's Office and the Wage and Hour Division Specifically. The point of contact is Ford Newman, who may be reached at (202) 693-5566.

Jeffrey Saylor
Member, Civilian Agency Acquisition Council

Director, Division of Acquisition Management Services
OASAM/BOC/OAMSS
U.S. Department of Labor
200 Constitution Ave.
Telephone (202) 693-7282

Facsimile (202) 693-7290 FAR Proposal Comments - rev.(

004-1

COMMENTS ON FAR PROPOSED RULE – DECEMBER 23, 2003

1. The most important feature of the Proposed Rule is the proposal to create a new contract clause entitled "Davis-Bacon Act—Secondary Site of the Work" (52.222-XX). We agree that such a new Davis-Bacon contract clause is needed to incorporate the December 20, 2000 final rulemaking into the sections of the Federal Acquisition Regulations (FAR) that implement Davis-Bacon Act labor standards requirements.

2. An additional provision is needed in 52.222-XX to make it clear that, regardless of whether the offeror, bidder, or contractor awarded the contract has taken appropriate action pursuant to the provisions of the proposed clause regarding "Secondary Site of the Work", the contracting agency has the authority, either on its own initiative, or in response to a determination from the Department of Labor, to amend the solicitation or contract to apply the appropriate Davis-Bacon labor standards requirements to contract work on a "secondary site". Sample language is provided below in our recommendation for revising the proposed 52.222-XX (see Item 6.)

3. Also, we recommend that the language in proposed 52.222-6(b)(1), regarding incorporation of the secondary site wage determination without a price adjustment -- "Any wage determination subsequently incorporated for a secondary site of the work shall be effective from the first day on which work under the contract was performed at that site and shall be incorporated without any adjustment in contract price or estimated cost." -- instead be placed in 52.222-XX. We believe it makes good organizational sense to place all substantive provisions governing wage determinations for secondary sites in the same contract labor standards provision.

4. We suggest deletion of the words "subsequently" and "subsequent" in proposed 52.222-6(b)(1) and 52.222-XX, as they relate to incorporation into the contract of wage determinations applicable to secondary sites. A wage determination applicable to any work performed at a secondary site must be incorporated into the construction contract regardless of whether the contractor decides before or after contract award to use a secondary site for the construction of significant portion(s) of the building or work called for by the contract.

5. We recommend that the phrase "primary place of performance" in 52.222-XX(b) be replaced with "primary site of the work", since that is the defined term that needs to be clearly referenced there.

004-1

6. The following mark-up reflects the necessary changes and additions we recommend to proposed 52.222-XX. In addition to the revisions already discussed above, we believe that deletion of this section's proposed subsection (a)(2) is appropriate since the Davis-Bacon labor standards apply to any "secondary site" by definition, not based on the offeror's opinion concerning applicability.

52.222-XX Davis-Bacon Act--Secondary Site of the Work.

As prescribed in 22.407(h), insert the following provision:

Davis-Bacon Act--Secondary Site of the Work (Date)

(a)The offeror shall notify the Government if the offeror intends to perform work at any secondary site, as defined in paragraph (a)(1)(ii) of the Davis-Bacon Act clause of this solicitation; and

(b) If the wage determination provided by the Government for work at the primary site of the work is not applicable to the secondary site(s), the offeror shall —

(1) Obtain a general wage determination for the secondary site via the Internet at http://www.xxx, and provide it to the Government for inclusion in the contract; or

(2) If a general wage determination is not available for the secondary site, request the Contracting Officer to obtain a project wage determination from the Department of Labor. The offeror should request the project wage determination for the secondary site as soon as possible. The due date for receipt of offers will not be extended as a result of an offeror's request for a project wage determination for a secondary site of the work.

(3) If either the contracting agency or the U.S. Department of Labor determines that the appropriate wage determination for a covered "secondary site" has not been incorporated into the solicitation or contract, the contracting agency, on its own initiative or at the direction of the U.S. Department of Labor, shall amend the solicitation or contract to incorporate the applicable wage determination into the solicitation or contract.

(4) Any wage determination incorporated into the contract for a secondary site of the work shall be effective from the first day on which work under the contract was performed at that site and shall be incorporated without any adjustment in contract price or estimated cost.

(End of provision)

7. We suggest that the label "*Minimum wages*" be inserted so that the beginning of the current 52.222-6(a), redesignated as 52.222-6(b), would begin as follows: "(b) *Minimum wages.* (1) ...".

004-1

8. The same changes in the designation of the DOL apprenticeship agency from the Bureau of Apprenticeship and Training (BAT) to the Office of Apprenticeship Training, Employer, and Labor Services (OATELS), which are being made to the definition of *Apprentice* in 22.401 and in the contract clause 52.222-9(a) *Apprentices*, also need to be made in the definition of *Trainee* in 22.401 and in 52.222-9(b) *Trainees.*

9. The Site of the Work definition that would be added to 52.222-6 as paragraph (a), as printed in the Proposed Rule, needs two corrections in paragraph (2): At the end of the first sentence "Contractor project" should be revised to state "contract or project".

10 In the definition of "Construction, alteration and repair" that would be added to 52.222-11 as paragraph (a), subparagraph (4) "site of work" should be revised to read ""site of the work".

11. Item 17 of the Proposed Rule would revise SF-1413 (48 CFR 53.301-1413). On the actual form, the word "Disputes" is misspelled.

12. We suggest that the new contract clause, "Davis-Bacon Act – Secondary Site of the Work" (52.222-XX), might appropriately be placed at 48 CFR 52.222-5 (currently "Reserved"). This would place it just ahead of the current Davis-Bacon clauses in the FAR and just after the Contract Work Hours and Safety Standards (CWHSSA) clause, 55.222-4 – i.e., with other contract clauses that apply to federal contracts to which the Davis-Bacon Act labor standards apply.

2002-004-3

"Division 8 Inc." <rob@division8inc.com>

02/13/2004 08:28 PM

To: farcase.2002-004@gsa.gov
cc:
Subject: FAR case 2002-004

It is our feeling that the definition of "site of work" must be exclusive to the actual installed location of the work. We are a glazing contractor and we purchase finished fabricated products from a multitude of vendors. It is beyond our logistic capability to determine, let alone police, whether a particular vendor of our fabricated products (i.e. glass, aluminum framing, aluminum doors, door hardware, etc.) are manufactured at a site specific to the individual project or not.

In these times of escalating construction costs this appears to be an attempt to globally incorporate more bureaucracy into private sector. The only outcome of this proposed revision is increased construction, legal, and governmental costs. This move will cost small construction businesses, such as ourselves, millions of dollars in revenue that would otherwise promote our nation's economy.

We urge the Federal Acquisition Regulation Council to abandon this proposed rule.

Thank you,<?xml:namespace prefix = o ns = "urn:schemas-microsoft-com:office:office" />

Robert N. Hoyt
Division 8 Inc.
Phone 619-741-7552
Fax 619-741-7582

2002-004-4

"Andy Kurth"
<alk@edkurthsons.com>

02/14/2004 08:15 AM

To: farcase.2002-004@gsa.gov
cc:
Subject: Re: FAR Case 2002-004

Dear Ms. Laurie Duarte:

This is to express my dismay and concern about the contemplated expansion of the existing Davis-Bacon law to include secondary worksites. Speaking as a small businessman who employs 30 people, I can tell you that our job gets tougher all the time without more onerous Davis-Bacon requirements. Where would the expansion ultimately stop? I fear I know; the end of the road will have been reached when every citizen is in the direct employ of the government, earning government-set wages and having no incentive to compete or excel.

We don't need this expansion of Davis-Bacon, but if it must be considered, my quarter demands that you at least comply with the Regulatory Flexibility Act and conduct an analysis of the cost this potentially disastrous legislation, and publish same for public comment.

Sincerely,

Andrew L. Kurth

the comfort group
mechanical systems

*Smart **people**. Smart **solutions**.*

2002-004-5

February 16, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, NW, Room 435
Washington, D.C. 20405

Re: **FAR Case No. 2002-004 (Site of the Work)**

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts and matters.

The Comfort Group is a privately owned mechanical contracting firm that was established in 1968. We have offices in Nashville, TN and Huntsville, AL. We provide in the neighborhood of $30 million of our services throughout the southeast.

We feel strongly that the Council should not extend coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. Proper geographic scope has already been established in settled court decisions. The Council's claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work" is in error as has been proven so in extensive court decisions. It is our belief that the Council has the discretion and legal authority to reject such improper expansion of the Davis-Bacon Act.

The retroactive provisions of this proposal add insult to injury. The injury is caused by devastation to federal contractors, particularly small businesses. The insult of back pay for secondary sites being absorbed wholly by such small businesses is simply wrong.

The Regulatory Flexibility Act requires that an analysis of the cost of this rule to small businesses must occur and be published for comment. We expect this to be done.

Sincerely,

Mark Smith

Mark Smith
Vice President

www.thecomfortgroup.com
Corporate Office 659 Thompson Lane **Nashville, Tennessee 37204** Phone 615.263.2900 **Fax 615.263.2939**
Alabama Office 3085 Leeman Ferry Road, SW **Huntsville, Alabama 35801** Phone 256.883.6820 **Fax 256.883.5332**

2002-004-6

February 16, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, DC 20405

RE: Comments on Proposed Rule Regarding Labor Standards Provision Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters, 68 Fed. Reg. 74403. Turner Industries Holding Company, LLC is a family-owned industrial construction and maintenance company with annual revenues of over $800 million, serving both domestic and international markets.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work", the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. Small contractors would wholly absorb the cost associated with backpay for secondary sites on on-going projects. The Council **MUST FULLY COMPLY WITH THE REGULATORY FLEXIBILITY ACT** and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Thomas H. Turner

Thomas H. Turner
President

2002004-7

February 16, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F. Street, N.W., Room 4035
Washington, D.C. 20405

RE: FAR Case 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. Oak Electric Co., Inc. is an electrical contractor that is private a privately owned and services the state of New Jersey.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis- Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work", the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with back pay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Michael Coscia
Oak Electric Co., Inc.

2002-004-8

February 16, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W. Room 4035
Washington, D.C. 20405

RE: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters, 68 Fed. Reg.74403. Carmody Plumbing is a family-owned plumbing contractor in the Omaha, Nebraska with fewer than 35 employees on the payroll.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

T.J. Carmody
Carmody Plumbing

2002-004-9

February 16, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

Re: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters, G8 Fed. Reg. 74403. **Cedar Lake Electric, Inc.** is a family owned electrical contracting business serving Central and Southern Minnesota. **Cedar Lake Electric** provides a wide range of electric services available, offering notable specialties in high voltage systems, fire alarms, emergency service, design/build with AutoCAD support and electrical engineering resources.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "Site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with back pay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,
CEDAR LAKE ELECTRIC, INC.

Jay Valentyn
President

scrawford
<scrawford@denniselectric.com>
02/16/2004 09:56 AM

To: farcase.2002-004@gsa.gov
cc:
Subject: FARCASE 2002-004

2002-004-10

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. Dennis Electric, Inc. is a family owned Electrical contractor. We employ appx. 75 people in our two offices in Memphis, TN and Rogers, AR. Annual revenues are $10,000,00-$12,000,000.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act . While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. We can not afford the additional costs as we are already struggling with the continued increases in the cost of doing business. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Charles H. Dennis, Jr.
President
Dennis Electric, Inc.

Phone: (901) 382-8150
Fax: (901) 377-5731
E-mail: chdennis@denniselectric.com

"Dan Brodbeck"
<danb@amconst.com>
02/16/2004 12:25 PM

To: farcase.2002-004@gsa.gov
cc:
Subject: FAR case 2002-004

2002-004-11

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. American Constructors Inc. is a mid sized General Contractor in the commercial construction industry working predominantly in the middle TN area and throughout the Southeast.

The Council should not extend the coverage of the Davis-Bacon prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work", the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would wholly be absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule top small businesses and publish it for public comment.

Respectfully,

Daniel R. Brodbeck
American Constructors
Exec VP Construction Operations

Henry
<parish@a1access.net>

02/16/2004 08:27 AM

To: "FAR Secretariat" <farcase.2002-004@gsa.gov>
cc:
Subject: RE: FAR case 2002-004

2002-004-12

Council Members,

We would like to express our opposition to the expansion of the Davis-Bacon act expanding it's definition to include off-site work areas as well as the transportation in connection with it.

The lack of control and the administration that would be necessary to properly determine, track, record and enforce these areas just sets up a compounding process that ends up costing owners and tax payers unanswered and wasted expense.

There is another inherent problem - second tier subcontractors and material suppliers, ie: cabinet shops, hollow metal and structural steel fabricators, etc. The starting and stopping points would be areas of suspect and debate.

Please consider all the different aspects that would be involved in the expansion of this program as they regard to definition and control.

Thank You

"Illinois Foundation Fair Contracting" <iffc1234@sbcglobal.net>

02/16/2004 04:55 PM

To: farcase.2002-004@gsa.gov
cc: rogerliuna@aol.com
Subject: FAR case 2002-004

2002-004-13

ATTN: Laurie Duarte

Re: FAR case 2002-004

I am writing to urge the Federal Acquisition Regulation Council to adopt the proposed rule to require construction contractors to pay Davis-Bacon Act prevailing wages at secondary worksites. As a member of the central Illinois construction community, during the last decade I have personally observed a perversion of the Davis-Bacon Act by many unscrupulous contractors. More and more, rather than pay mandated DBRA wages, these companies simply set up a site a mile down the road to fabricate portions of public works construction projects historically performed on site. Even though these secondary sites are set up to prefabricate parts for the primary project, these contractors claim to be exempt from prevailing wages for this fabrication and for the transportation to the primary site. This loophole should not be allowed to continue, as being against the intent of the Davis-Bacon Act, and being against public policy as well. If an asphalt or concrete plant is set up to serv! e a large highway project, the question of proximity to the project should have no bearing on the wages paid. The intent of the Davis-Bacon Act is clearly being circumvented through this manipulation, and could be quickly clarified by adoption of the proposed rules.Thank you for your consideration.

Terry E. Bobell
Citizen, Taxpayer, Operating Engineer
500 N. Logan St.
Deer Creek, IL 61733

"Sue Nesheim" <SNesheim@seatonlaw.com>
02/16/2004 03:12 PM

To: farcase.2002-004@gsa.gov
cc:
Subject: FAR case 2002-004

2002-004-14

-----Original Message-----
From: Sue Nesheim
Sent: Monday, February 16, 2004 2:03 PM
To: 'Nethercutt@abc.org'
Cc: 'jgrev@mnabc.com'; rheise@mnabc.com (rheise@mnabc.com)
Subject: Regulatory Expansion of Davis-Bacon

To Whom It May Concern:

The FAR Council's proposed rule to extend the Davis-Bacon Act from construction worksites to secondary worksites should not be adopted. The Davis-Bacon Act artificially subsidizes wages and excludes competition, with particularly exclusionary effects on minority contractors. Union contractors now employ barely 20% of American construction workers, but the Davis-Bacon Act's flawed "survey" procedures regularly result in excessively high union wage rates on projects (sometimes 2-3 times the true market rate). Despite the pious "prevailing wage" rationale, the Davis-Bacon Act is simply protectionism for certain uncompetitive union contractors. The FAR Council should allow all construction workers – union and non-union, white and minority – to compete fairly for government work, without wage subsidies and reduce the cost of government projects to private sector levels. The Davis-Bacon Act should not be extended to any new projects.

Sincerely,

Douglas P. Seaton
SEATON, BECK, PETERS, BOWEN & FEUSS, P.A.

"Wolfe, Monica"
<Monica.Wolfe@faith-technologies.com>
02/16/2004 02:32 PM

To: farcase.2002-004@gsa.gov
cc:
Subject: RE: FAR case 2002-004

2002-004-15

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W. Room 4035
Washington, D.C. 20405

Re: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004.

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg 74403. SKC Electric is an Electrical Contracting firm, which is a company of Faith Technologies, Inc. We serve Kansas, Missouri, Nebraska, Colorado, and other regions in the Midwest and surrounding areas.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work, " the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with back pay for secondary sites on on-going project would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Monica Wolfe for Mike Jansen
SKC Electric

February 17, 2004

2002-004-16

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington DC 20405

RE: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction (Site of the Work) FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. Altmann Construction Company is a general contractor in Central Wisconsin that employs 49 masons, carpenters, operators, concrete finishers and laborers. Our volume of sales in 2004 was over $ 12 million; 50% of work is public work and 50% is private negotiated work.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work", the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small business. The cost associated with back pay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Tammy Meyers,
Human Resource Manager

"Steve York"
<syork@yorkes.com>
02/17/2004 11:48 AM

To: farcase.2002-004@gsa.gov
cc: drumond@abc.org, jstrock@abc.org
Subject: FARcase 2002-004

2002-004-17

We are adamantly opposed to any regulatory expansion of Davis-Bacon. The perpetuation of the act does nothing to serve the interest of the American worker and/or the tax paying citizens of this country.

With a severe shortage of industry experience and a lack of construction career crafts people, market forces will serve to insure that competitive wages and benefits will prevail. In every instance where we have participated in wage reporting to establish a prevailing wage, the published rates that follow do not reflect the market we compete in every day.

Let the market manage the prevailing wage and use the bureaucratic budget to finance Education. An educated work force will help preserve our democratic freedoms and improve our competitive efforts in a global economy.

Stephen R. York, President
syork@yorkes.com
(918) 744-6310

2002-004-18

February 16, 2004

Ms. Lori Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

Re: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. J. Wilkinson, Inc., our family-owned company established in 1990, employees between 15-30 workers whom all enjoy the benefits and opportunities of our merit shop business. We are a General Contractor performing work in the mid-western states of Illinois, Indiana, and Missouri, and our company and it's employees strongly oppose any extensions of the Davis-Bacon standards.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the council claims to be following the department of Labor's definitional rules adopted in 2000 on "site of the work", the DOL's definition is invalid according to extensive court decisions. The council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

With the rising costs of construction on public works projects reaching uncontrollable proportions, it is time to say NO to organized labor and the Clinton cronies. This newest regulation is no more than a prop for organized labor to strangle down our economics. I believe a more fair and economical standard would be to abolish the Davis-Bacon Act in its entirety.

004-18

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with back pay for secondary sites on on-going projects would be wholly absorbed by small contractors. The council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Jamie Wilkinson, Pres.
J. Wilkinson, Inc.

"John A. Freitag"
<john@cisco.org>

02/17/2004 11:06 AM

To: farcase.2002-004@gsa.gov
cc:
Subject:

2002-004-19

I am writing to urge the Federal Acquisition Regulation Council to adopt the proposed rule to require construction contractors to pay Davis-Bacon Act prevailing wages at secondary worksites. As a member of the central Illinois construction community, during the last decade I have personally observed a perversion of the Davis-Bacon Act by many unscrupulous contractors. More and more, rather than pay mandated DBRA wages, these companies simply set up a site a mile down the road to fabricate portions of public works construction projects historically performed on site. Even though these secondary sites are set up to prefabricate parts for the primary project, these contractors claim to be exempt from prevailing wages for this fabrication and for the transportation to the primary site. This loophole should not be allowed to continue, as being against the intent of the Davis-Bacon Act, and being against public policy as well. If an asphalt or concrete plant is set up to serve a large highway project, the question of proximity to the project should have no bearing on the wages paid. The intent of the Davis-Bacon Act is clearly being circumvented through this manipulation, and could be quickly clarified by adoption of the proposed rules.Thank you for your consideration.

John Freitag, Director
CISCO Fair Contracting Committee

"Debbie Bailey"
<dbailey@awbengineers.com>
02/17/2004 12:51 PM
Please respond to
"Debbie Bailey"

To: laurie.duarte@gsa.gov
cc: farcase.2002-004@gsa.gov
Subject: FAR Case 2002-004

2002-004-20

February 17, 2004

04-AWB-0247

Ms. Laurie Duarte

General Services Administration

FAR Secretariat

1800 F Street, NW, Room 4035

Washington, DC 20405

RE: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of work" on projects covered by the Davis-Beacon Act or related acts, and related matters. 68 Fed. Reg. 74403.

As a former owner operator of a concrete prestress / precast production company, I can't imagine the problems declaring this type of production facility a "job site". Many projects are being produced concurrently and managing the worker, job functions and wages for jobs flowing through production would be, in my opinion, a disaster.

I urge you to define "job site" as the actual physical site on which the project is produced!

Sincerely,

004-20

Andrew W. Booth, P.E.

President

Andy Booth
AWB Engineers
1942 Northwood Drive
Salisbury, MD 21801
Phone 410-742-7299
email abooth@awbengineers.com
410-742-7299

2002-004-21

QUALITY MACHINE AND WELDING CO., INC.

(STEEL FABRICATORS)

P.O. BOX 27345
KNOXVILLE, TN 37927
(865) 524-2162

2008 HOITT AVENUE
KNOXVILLE, TN 37917
Fax (865) 524-1830

****

February 17, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F. Street, N.W., Room 4035
Washington, D.C. 20405

Dear Ms. Duarte,

First let me express my appreciation for time and consideration of my opinions on the FAR Council's proposed rule regarding the definition of "site of work" on projects covered by the Davis-Bacon Act or related acts. Quality Machine and Welding Co., Inc. is a family owned structural steel fabricator specializing in commercial, institutional, industrial, and assembly construction with annual revenues ranging from 8 to 10 million. We employ approximately 75 people on a full time basis.

The council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The additional definition of the "Site of Work" violates settled court decisions concerning the proper geographic scope of the Act. I also believe that the DOL's definition of "site of work", adopted in 2000 is invalid and should be rejected by the Council.

The economic impact of this decision would be devastating to small contractors that are currently performing work on federal sites. The cost associated with back pay for secondary sites on ongoing projects would be absorbed wholly by small contractors. If the "site of work" were expanded to manufacturing plants such as ours, the accounting cost alone would be cost prohibitive. Also, complying with the numerous different Davis-Bacon requirements from site to site and area to area would be impossible to manage.

I urge you to consider these issues and not extend the definition of "site of work" on projects subject to the Davis-Bacon Act. The council must also fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small business and publish it for public comment.

Sincerely,

Jeffrey W. Roth
Vice President

2002-004-22

"Dawn Olenski" <dolenski@windsorelec.com>

02/17/2004 02:49 PM

To: farcase.2002-004@gsa.gov
cc:
Subject: RE: FAR Case 2002-004

Message-----
From: Dawn Olenski [mailto:dolenski@windsorelec.com]
Sent: Tuesday, February 17, 2004 2:43 PM
To: farcase2002-004@gsa.gov
Subject: RE: FAR Case 2002-004

February 17, 2004

Ms. Laurie Duarte
General Service Administration
FAR Secretariat
1800 F Street, NW
Room 4035
Washington, DC 20405

RE: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR
Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. Windsor Electric Co., Inc. is a family owned commercial, industrial, and institutional electrical contractor serving the Baltimore area.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act . While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL 's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Terry Shorb
Vice President
Windsor Electric Co., Inc.

2002-004-23

KRUEGER'S SIGN & ELECTRIC
300 INDUSTRIAL AVE
CLINTONVILLE, WI 54929
PHONE: 715-823-5121
FAX: 715-823-5393

February 17, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

RE: Comments on Proposed Rule Regarding labor Standards Provisions applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. Krueger's Sign & Electric Inc is a family owned electrical contracting company located in east central Wisconsin with approximately 20 employees.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

004-23

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. With a sluggish economy companies can not afford any added cost. Yes, the economy is looking up, but at a very slow pace, slower than expected. Our goal as a company is to keep our employees employed and avoid lay-offs. Adding secondary sites for prevailing wages add costs and too many costs cause lay-offs. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,
Mike Krueger, president
Krueger's Sign & Electric, Inc

ANN LONG

RE: RENTAL UNIT AT 86 LINCOLN ST.

THE FOLLOWING IS A BREAKDOWN OF WHAT WAS USED AT THE RENTAL UNIT.

UPSTAIRS ATTIC:
7 – ½ STAPLES
6 - #8 SE STAPLES
1 – 4 11/16" BOX
1 – 4 11/16" BLANK COVER
1 – 4 X 4 X 2 1/8" BOX
1 – 4 X 4 BLANK COVER

004-23

6 – DRYWALL SCREWS
11 – 452 WIRENUTS
3 - #8 SPLIT BOLTS
1 – ¾" FLEX CONNECTOR

11/14/03 LABOR (JOSH): 8:45 – 12:15

DOWNSTAIRS / LIGHT FIXTURE / BEDROOMS:
2 – BEDROOM CEILING MOUNT FIXTURES
4 – T-BAR HANGERS W/CLIPS (FOR FIXTURES)
3 – OCTAGON BOXES
4 – 60 WATT BULBS

11/24/03 LABOR (JOSH): 9:15 – 12:00
LABOR (COREY): 9:15 – 10:15

RE-WIRE BASEMENT:
2 – 15 AMP 3 WAY SWITCHES
1 – 2 GANG SWITCH PLATE
4 – 1 GANG BLANK PLATES
4 – 1 GANG NAIL-ON BOXES
2 – 4 X 4 X 2 1/8" BOXES
2 – 4 X 4 BLANK COVERS
8 – ½" RX CONNECTORS
1 – PULLCHAIN FIXTURE
40' – 14/3 RX WIRE
94' – 14-2 RX WIRE
19 – ½ STAPLES
1 – 3/8" BX CONNECTOR
2 – OCTAGON BLANK COVERS
16 – 452 WIRENUTS
22 – 451 WIRENUTS

11/24/03 LABOR (JOSH): 12:30 – 6:00

11/25/03 LABOR (JOSH): 10:30 – 11:30 & 12:30 – 1:30

1/7/04 LABOR (JOSH): 11:00 – 1:45

ALSO INSTALLED ONE 15 AMP GFI OUTLET NEXT TO THE SINK IN JOE'S APARTMENT.

004-23

IF YOU HAVE ANY QUESTIONS, PLEASE CALL.

THANK YOU,

MIKE KRUEGER

2002-004-24

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

Re: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed.Reg. 74403.
Pember Companies, Inc. is a family owned company with annual revenues of $12,000,000.00 that serves Wisconsin and Minnesota.

The council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the council claims to be following the Department's of Labor's definitional rules adopted in 2000 on "site of the work", the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with back pay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Joe Pember
Pember Companies, Inc.

2002-004-25

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

2/17/04

Re: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed.Reg. 74403.
Performance Concrete, Inc. is a family owned company with annual revenues of $896,000.00 that serves Wisconsin and Minnesota.

The council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the council claims to be following the Department's of Labor's definitional rules adopted in 2000 on "site of the work", the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with back pay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Larry Pember
Performance Concrete, Inc.

D.L. Wilson Construction

2002-004-26

General Contractor

February 17, 2004

Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

Re: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. D.L. Wilson Construction Co. is a General Contractor, Portland, Oregon & Washington area with 6 employees.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with back pay for secondary sites on on-going projects would be wholly absorbed by small contractors. Prevailing wage does over inflate these types of projects by 3 -4 dollars an hour at tax payers cost. Private sector owners will not, cannot afford to pay the additional costs. In the past, only public works and government subsidized projects paid for by the tax payers could afford to do the projects. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Respectfully,

David L. Wilson
D.L.Wilson Construction

3007 NE 181st Avenue · Portland, Oregon 97230 · (503) 666-3600

2002-004-27

"Mike Brown"
<tccolonial@sbcglobal.net>

02/18/2004 03:24 PM

To: FARcase.2002-004@gsa.gov
cc:
Subject: FAR case

As a small company employing 15-20 people in Illinois, we wish to strongly oppose any further regulatory expansion of the David Bacon Act. Furthermore, under the Regulatory Flexibility Act, F.A.R. is required to conduct an analysis of the cost to small businesses. This should be done and reviewed before any ruling should take place.

Thank You,

Tim Jone, Vice President
Towne & Country Colonial, Inc.

2002-004-28

"Robin Collier"
<rcollier@abctennessee.com>

02/18/2004 12:20 PM

To: farcase.2002-004@gsa.gov
cc:
Subject: FAR Case 2002-004 -- "Site of Work"

Attn: Laurie Duarte
General Services Administration
FAR Secretariat

Dear Ms. Duarte,

Thank you for the opportunity to submit comments on the FAR Council's proposed rule (FAR Case #2002-004). The more than 800 construction related businesses in Tennessee that are members of our organization vigorously oppose this proposal.

The Council has the discretion and authority to reject this improper expansion of the Davis-Bacon Act. As you know, the DOL's definition is invalid according to numerous court decisions. This proposal is an unreasonable extension of Davis-Bacon wage rates to off-site locations and it would be exceedingly costly to small businesses. You are urged to conduct an analysis of the cost of this proposed rule to small businesses and publish it for public comment.

Thanks again for your consideration,
Bob

Bob Pitts, President
ABC Mid-Tennessee Chapter
1604 Elm Hill Pike, Nashville, TN 37210
Phone: 615-399-8323
Fax: 615-399-7528
bpitts@abctennessee.com
or rcollier@abctennessee.com

2002-004-29

JStrock@abc.org

02/18/2004 10:22 AM

To: farcase.2002-004@gsa.gov
cc: syork@yorkes.com
Subject: FW: FARcase 2002-004

-----Original Message-----
From: Steve York [mailto:syork@yorkes.com]
Sent: Tuesday, February 17, 2004 11:48 AM
To: farcase.2002-004@gsa.gov
Cc: drumond@abc.org; jstrock@abc.org
Subject: FARcase 2002-004

We are adamantly opposed to any regulatory expansion of Davis-Bacon. The perpetuation of the act does nothing to serve the interest of the American worker and/or the tax paying citizens of this country.

With a severe shortage of industry experience and a lack of construction career crafts people, market forces will serve to insure that competitive wages and benefits will prevail. In every instance where we have participated in wage reporting to establish a prevailing wage, the published rates that follow do not reflect the market we compete in every day.

Let the market manage the prevailing wage and use the bureaucratic budget to finance Education. An educated work force will help preserve our democratic freedoms and improve our competitive efforts in a global economy.

Stephen R. York, President
syork@yorkes.com
(918) 744-6310

2002-004-30

Mike
<mquigley@iiiffc.org>
02/18/2004 09:38 AM
Please respond to Mike

To: farcase.2002-004@gsa.gov
cc:
Subject: off site construction

ATTN: Laurie Duarte

Re: FAR case 2002-004

I am writing to urge the Federal Acquisition Regulation Council to adopt the proposed rule to require construction contractors to pay Davis-Bacon Act prevailing wages at secondary worksites. As a member of the Illinois Prevailing Wage Council I have personally observed numerous violations of the Davis-Bacon Act by many unscrupulous contractors. Rather than pay mandated DBRA wages, these companies simply set up a site a mile down the road to fabricate portions of public works construction projects historically performed on site. Even though these secondary sites are set up to prefabricate parts for the primary project, these contractors claim to be exempt from prevailing wages for this fabrication and for the transportation to the primary site. This loophole should not be allowed to continue, as being against the intent of the Davis-Bacon Act, and being against public policy as well. If an asphalt or concrete plant is set up to serve a large highway project, the question of proximity to the project should have no bearing on the wages paid. The intent of the Davis-Bacon Act is clearly being circumvented through this manipulation, and could be quickly clarified by adoption of the proposed rules.Thank you for your consideration.

Mike Quigley
600 S. Weber Rd
Romeoville, Illinois 60446

2002-004-31

"David M. Royal"
<dmroyal@nrtec.com>
02/18/2004 05:18 PM

To: farcase.2002-004@gsa.gov
cc:
Subject: RE: FAR case 2002-004

ENERTECH INC.
4156 "L" Street · Omaha, Nebraska 68107 · 402-731-0777

<?xml:namespace prefix = o ns = "urn:schemas-microsoft-com:office:office" />

February 18, 2004

Subject: Oppose the Regulatory Expansion of Davis-Bacon!

Gentlemen:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. Enertech Incorporated is a $4 million dollar temperature control contracting firm serving the state of <?xml:namespace prefix = st1 ns = "urn:schemas-microsoft-com:office:smarttags" />Nebraska and western Iowa. We are based in Omaha, NE and employ 25 people.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act . While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. At the very least, the Council needs to fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Very Truly Yours,

004-31

David M. Royal
Vice President

David M. Royal
Vice-President

dmroyal@nrtec.com

Enertech Incorporated
4156 L Street
Omaha, NE 68107-1167

tel: 402-731-0777
fax: 402-731-0777
mobile: 402-510-3056

2002-004-32

"Mike Everett" <meverett@ibew34.org >

02/18/2004 03:17 PM
Please respond to "Mike Everett"

To: "Laurie Duarte" <farcase.2002-004@gsa.gov>
cc:
Subject: FAR case2002-0004

I respectfully urge the Federal Acquisition Regulation Council to adopt the proposed rules requiring contractors to pay Davis-Bacon Act prevailing wage rates on all secondary worksites. The United States government has long recognized that preserving the wages and the standard of living of any given area in this country is vital to our future. We must close this loophole which allows the undermining of local wages and fringe benefits.

Michael Everett

2002-004-33

QN ELECTRIC, INC.

P. O. Box 129, Kailua, HI 96734

Phone: (808) 263-9813

Fax: (808) 263-9506

February 18, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, DC 20405

Re: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-2004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. QN Electric, Inc. is a family owned electrical contracting firm with annual revenues of 6.7 million dollars serving the Hawaiian islands.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definitions invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

QN Electric, Inc.
Kenneth J. Quirin, Sr.
President

2002-004-34

real mechanical, inc.

February 18, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 W. F Street, N.W., Room 4035
Washington, D.C. 20405

RE: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. Real Mechanical, Inc. is a privately owned mechanical contractor that performs public and private work in the State of Indiana with annual revenues of approximately $12 million.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of the "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work", the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with back pay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

REAL MECHANICAL, INC.

Robert K. Fritsche

Robert K. Fritsche
President

475 Gradle Drive, Carmel, Indiana 46032 Telephone 317-846-9299

2002-004-35

February 18, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

Re: Comments on Proposed Ruling Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters, 68 Fed. Reg. 74403. RLE Construction, Inc. is a family owned general contractor providing services in Cincinnati and surrounding areas.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of the work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work", the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Rich Enyeart
President

ELECTRICAL GENERAL CORPORATION

2002-004-36

9070-A Junction Drive, Annapolis Junction, MD 20701
(301) 725-5700 • (301) 953-7966 • (410) 792-0022
Fax (301) 953-3811 • (410) 792-0162

February 16, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, NW, Room 4035
Washington, DC 20405

Dear Ms. Duarte:

Re: Comments on FAR Case No. 2002-004, Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work")

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. Electrical General Corporation is a family-owned electrical contractor serving Maryland, Virginia and the District of Columbia, with annual revenues of approximately $22 million.

It is our belief that the Council should not extend Davis-Bacon prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" appears to violate standing court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act and we would urge it to exercise its discretion by rejecting this proposed Rule.

Moreover, the retroactive provisions of this proposal would be devastating to Federal contractors, particularly small businesses such as ours. The cost associated with back pay for secondary sites on on-going projects would be wholly absorbed by small contractors. The impact of additional warehousing and prefabrication costs would not only effect small contractors, such as ourselves, but those who may be subcontracting with us for various portions of our work. Before considering such a dramatic and far-reaching expansion of the Davis-Bacon Act, its impact should be examined in light of the Regulatory Flexibility Act and an analysis conducted of the cost of this Rule and its effect on small businesses and its findings published for public comment.

Sincerely,

Clinton M. Heine
President

2002-004-37

PO Box 1030
Stevensville, MD 21666

410-643-8701
Fax 410-643-8802

TECO, INC.

February 19, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F. Street, N.W., Room 4035
Washington, D.C. 20405

RE: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004.

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. TECO, Inc. is a contracting company doing business in the state of Maryland.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary work-sites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definition rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small business. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act, conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

JH Tice

JH Tice
President
TECO, Inc.

004-37

2002-004-38

PO Box 918
Stevensville MD 21666

410-604-6966

En-Tice-Ment Enterprises, Inc.

February 19, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F. Street, N.W., Room 4035

004-38

Washington, D.C. 20405

RE: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004.

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. Enticement Enterprises is a contracting company doing business in the state of Maryland.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary work-sites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definition rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small business. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act, conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

DJ Tice

DJ Tice
President
En-Tice-Ment Enterprises, Inc.

2002-004-39

February 19, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, DC 20405

Re: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. Gemini Electric, Inc. is a public electrical contractor with over 75 employees serving New Hampshire, Massachusetts, Maine, Vermont and Connecticut.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work", the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

GEMINI ELECTRIC, INC.

Matthew C. Connors
President

MCC/lmo

gemdocs/mds/matts/FAR case 2002-004

2002-004-40

"Cathy S Stewart"
<cstewart1@bop.gov>
02/20/2004 09:37 AM

To: farcase.2002-004@gsa.gov
cc: "Jan R. Johns" <jjohns@bop.gov>, "Matthew D. Nace" <mnace@bop.gov>
Subject: FAR Case 2002-004, Labor Standards for Contracts Involving Construction

This is in reference to FAR Proposed Rule 2002-004, Labor Standards for Contracts Involving Construction, which would amend the FAR to implement the revised definitions of "Construction" and "site of the work" in the Department of Labor regulations.

The Federal Bureau of Prisons offers the following comments:

1. By implementation of this proposed rule will the Contracting Officer be required to visit identified secondary sites of the work to verify wage rate posting and perform wage interviews? How will compliance be monitored?

2. The FAR Council needs to interpret or define what they mean by "significant portion of the work" under the Definition- Site of Work. Do they mean significant as in a certain percentage of the contract work (i.e. 1%, 5%, 10 %, 50% of the work), or do they mean significant as in the "critical items of the work" in the government's determination. "Significant" needs to be clearly defined (i.e. "more than XX% of the total value of the contract"), or the ambiguity will lead to the clause being unenforceable and a constant source for argument and dispute between the Government and the contractor.

3. The FAR council should include liquidated damages for situations where a firm sets up what they call a "permanent, previously established facility" and then coincidently abandons and dismantles the facility when the work is complete. Such "bait and switch" opportunity seems to be a loophole in the proposed rule with no recourse other than negative performance evaluation comment.

Thank you for the opportunity to provide comments regarding this case. If you need further information, please contact Matthew D. Nace, Chief, Acquisitions Management Section, Federal Bureau of Prisons, (202) 307-0985.

2002-004-41

"Brett West" <westspaints@msn.com>

To: farcase.2002-004@gsa.gov
cc:
Subject: FAR case2002-004

02/21/2004 11:02 PM

Laurie Duarte,

I am writing to urge the Federal Acquisition Regulation Council to adopt the proposed rule to require construction contractors to pay Davis-Bacon Act prevailing wages at secondary work sites, which actually are not secondary work sites , they are labeled that way so the companies do not have to pay the prevailing wages. I am in the construction field and have seen asphalt and or concrete plants set up for major highway work,(which pays the prevailing wage) but the workers that are working at the batch plants do not get paid at the same rate. this loophole needs closed. And the companies need to quit manipulating the laws. So please adopt the proposed rule to help the little guys and not the large contractors.

Brett T. West
Operating engineer ,Taxpayer,and Voter.
Thank you

"Len and Hedy Trovero" <hedy@frontiernet.net>

02/21/2004 04:47 PM
Please respond to hedy

To: farcase.2002-004@gsa.gov
cc:
Subject: re; far case 2002-004

2002-004-42

ATTN: Laurie Duarte

I want to urge the Federal Acquisition Regulation Council to adopt the proposed rule to require construction contractors to pay Davis-Bacon Act prevailing wages at secondary worksites. It is important that workers at all sites connected with a project to the same rules and pay levels. This will make sure all workers will have wages to support their families.

Len Trovero, Operating Eng. 649

7774 E 1400 North Rd

Bloomington Ill, 61704

2002-004-43

"Mike Sheppard" <mike@michaelclay.com>

02/21/2004 02:45 PM

To: farcase.2002-004@gsa.gov
cc: "Clara Andriola" <clara@abcsierranv.org>
Subject: Opposition to Expansion of Davis Bacon

OPPOSITION TO REGULATORY EXPANSION OF DAVIS-BACON

Date: February 21, 2004
To: Laurie Duarte, Washington DC
Farcase.2002-004@gsa.gov
RE: FAR Case 2002-004

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. Michael Clay Corporation is a small general contractor working and bidding primarily in Nevada on Federal projects and projects with a component of Federal money subject to Federal Davis-Bacon Wage.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act . While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. Our current projects are already impacted by the economics of the Iraq war and shifts in the economy. This regulation could have a very negative effect on our company. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Thank you in advance for your consideration

Very truly yours,
Michael Clay Corporation d.b.a.
Michael Clay Constructors
Mike Sheppard
Mike Sheppard, President

"Saebra Walljasper" <saebra65@yahoo.com>

02/21/2004 12:41 PM

To: farcase.2002-004@gsa.gov
cc:
Subject: Re: FAR case 2002-004

2002-004-44

ATTN: Laurie Duarte

I am writing to urge the Federal Acquisition Regulation Council to adopt the proposed rule to require construction contractors to pay Davis-Bacon Act prevailing wages at secondary worksites. Rather than pay mandated DBRA wages, unscrupulous contractors simply set up a site a mile down the road to fabricate portions of public works construction projects historically performed on site. Even though these secondary sites are set up to prefabricate parts for the primary project, these contractors claim to be exempt from prevailing wages for these fabrications and for transportation of said fabrications to the main worksite. This loophole SHOULD NO LONGER BE ALLOWED TO CONTINUE!!! A secondary site's proximity to the main project should have no bearing on the wages paid, other than the prevailing wages for the entire project at hand. The intent of the Davis-Bacon Act is clearly being manipulated and could be clarified by the adoption of the proposed rules. Thank you for your time and consideration.

Saebra L. Walljasper

"Kevin T. Endress" <kmendress@bwsys.net>

02/21/2004 11:11 AM

To: farcase.2002-004@gsa.gov
cc:
Subject: Davis Bacon changes

2002-004-45

As a farmboy who was unable to return to the farm after college to make a decent living I found employment in construction.First as a Teamster, until the de-regulation of the industry at which time the companys chose to hire independent contractors who do not pay prevaling wage and no benefits. Now which as a member of Operating engineers Local 649 I enjoy decent wages and benifits.

I support the changes to the Davis Bacon Act to include off site work for larger projects. It is important to level the feild for all workers who contribute to the infrastructure of this country. Off site workers should be coverd by the same rules and should receive same pay levels and benefits as coverd by the D-B act. Put the money in the pockets of working families not in the pockets of the select few who run the large construction companies.

I am certain that the right moral decision will be made for future of my country and my family.

"James L. Whitesell"
<jamesofputnam@yahoo.com>

02/21/2004 10:09 AM

To: farcase.2002-004@gsa.gov
cc:
Subject: Re: FAR case 2002-004

2002-004-46

ATTN: Laurie Duarte

I am writing to urge the Federal Acquisition Regulation Council to adopt the proposed rule to require construction contractors to pay Davis-Bacon Act prevailing wages at secondary worksites. As a member of the central Illinois construction community, during the thirty three years I have personally observed a perversion of the Davis-Bacon Act by many unscrupulous contractors. More and more, rather than pay mandated DBRA wages, these companies simply set up a site a mile down the road to fabricate portions of public works construction projects historically performed on site. Even though these secondary sites are set up to prefabricate parts for the primary project, these contractors claim to be exempt from prevailing wages for this fabrication and for the transportation to the primary site. This loophole should not be allowed to continue, as being against the intent of the Davis-Bacon Act, and being against public policy as well. If an asphalt or concrete plant is set up to serve a large highway project, the question of proximity to the project should have no bearing on the wages paid. The intent of the Davis-Bacon Act is clearly being circumvented through this manipulation, and could be quickly clarified by adoption of the proposed rules.
Thank you for your consideration.

James L. Whitesell
Citizen, Taxpayer, Operating Engineer
13 Wood Drive
Putnam, IL 61537

=====
Jas

AKA James of Putnam

"Brad Walker"
<walkerb@adams.net>
02/22/2004 06:30 PM

To: farcase.2002-004@gsa.gov
cc:
Subject: far case 2002-004

2002-004-47

I,am writing to ask the federal Acquisition Regulation Council to keep the Davis-bacon act in tacit.I have seen some contractors abuse the Davis-bacon act.It is a terrible thing that a contractor thinks they can do what ever thy what to the good people that work for them.Please help keep the act in tacit.

Thank you Brad Walker

"Amy Ulm"
<ulmie93@sbcglobal.net>

02/22/2004 04:01 PM

To: farcase.2002-004@gsa.gov
cc:
Subject: ATTN:Laurie Duarte

2002-004-48

I am writing to urge the Federal Acquisition Reg. Council to adopt the proposed rule to require construction contractors to pay Davis-Bacon Act prevailing wages at secondary worksites. I am a member of the construction community in Illinois, I feel this is against public policy. The question of proximity of a project should have no bearing on the wages being paid.
The intent of the Davis-Bacon Act is clearly being circumvented through this manipulation, and could be quickly clarified by adoption of the proposed rules.

Thank you for your consideration.

Jim R. Ulm
Operating Engineer
Farmington, IL 61531

"Sarah and Ben" <bsvarnes03@bwsys.net>

02/22/2004 10:01 PM

To: "Laurie Duarte" <farcase.2002-004@gsa.gov>
cc:
Subject: RE: FAR case 2002-004

2002-004-49

I am writing to urge the Federal Acquisition Regulation Council to adopt the proposed rule to require construcion contractors to pay Davis-Bacon Act prevaling wages at secondary worksites.

Large work projects often have multiple staging and support sites because of the nature of the work. It is important that the workers at all sites connected with a project be subject to the same rules and pay levels.

These changes wiil enhance the abilities of workers to care for their families by increasing the wage package they will receive. It works for everyone.

Ben Varnes
Operating Engineer
4610 S. Lake Camelot Dr.
Mapleton, IL 61547

jcmtdoubet <jcmtdoubet@winco.net>
Sent by:
jcmtdoubet@winco.net

02/22/2004 09:32 PM
Please respond to
jcmtdoubet

To: farcase.2002-004@gsa.gov
cc:
Subject: FAR case 2002-004

2002-004-50

I am writing to urge the Federal Acquisition Regulation Council to adopt the proposed rule to reqire construction contractors to pay Davis-Bacon Act prevailing wages at secondary worksites. As a member of the central Illinois construction community, during the last decade I have personally observed a perversion of the David-Bacon by many unscrupulous contractors. More and more, rather than pay mandated DBRA wages, these companies simply set up a site a mile down the road to fabricate portions of public works construction projects historically performed on site. Even though these secondary sites are set up to prefabricate parts for the primary project, these contractors claim to be exempt from prevailing wages for this fabrication and for the transportation to the primary site. This loophole should not be allowed to continue, as being against the intent of the Davis-Bacon Act, and being against public policy as well. If an asphalt or concrete plant is set up to serve a large highway project, the question of proximity to the project should have no bearing on the wages paid. The intent of the Davis-Bacon Act is clearly being circumvented through this manipulation, and could be quickly clarified by adaoption of the proposed rules. Thank you for your consideration

Jeff W. Doubet
Citizen, Taxpayer, Operating Engineer
6104 E. Howard Rd.
Smithfeild, IL 61477

ibewquincy
<ibewquincy@ibew34.org>

02/19/2004 04:01 PM

To: farcase.2002-004@gsa.gov
cc:
Subject: FAR case 2002-004

2002-004-51

ATTN: Laurie Duarte

Re: Far case 2002-004

I am writing in order to urge the Federal Acquisition Regulation Council to adopt the proposed rule to require construction contractors to pay Davis-Bacon Act prevailing wages at secondary worksites. More and more contractors are setting up a worksite away from the primary work site just for the express purpose of circumventing the Davis-Bacon law and cheating their workers out of the pay they deserve. I have been a building trades construction worker for 25 years and during that time I have seen the erosion of prevailing wage laws increase exponentially. This loophole in the law needs to be closed. Just because work takes place "off site" should not have a bearing on the wage that is paid to the workforce. The intent of Davis-Bacon is being circumvented by this loophole. An adoption of the proposed rules would make the intent of the law even more clear. In closing I would like to thank you for your consideration in this matter.

Richard E. Jones
Taxpayer - Citizen
Building Trades Electrician
5402 Esther Ave

Quincy, IL 62305-9563

ibewquincy.vcf

2002-004-52

February 19, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N. W., Room 4035
Washington, D.C. 20405

Re: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. Continental Plumbing is a family owned plumbing construction company working in the Los Angeles, San Bernardino, Riverside, and Orange County area.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary site violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be the following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with back pay for secondary sites on-going projects would be wholly absorbed by small contractors. The Council must fully comply with Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Daniel S. Buckley
Vice President

"Chris & Susan Gibbs" <gibbsfam98@bwsys.net>

02/22/2004 09:00 PM

To: farcase.2002-004@gsa.gov
cc:
Subject: FAR case 2002-004

2002-004-53

I am writing to urge the Federal Acquisition Regulation Council to adopt the proposed rule to require construction contractors to pay Davis-Bacon Act prevailing wages at secondary worksites.

Christopher Gibbs
Operating Engineer
Local 649

lsellebay78437@aol.com

02/22/2004 08:34 PM

To: farcase.2002-004@gsa.gov
cc:
Subject: ATTN:Laurie Duarte

2002-004-54

As a construction worker in Illinois, I support the rule changes to make off site work covered by the Davis Bacon Act. It is important that workers at all sites connected with a project be subject to the same rules and pay levels.

Doug Baer
Operating Engineer, Edwards IL

2002-004-55

"Reta Coats"
<ncrage1@yahoo.com
>

02/22/2004 08:08 AM

To: farcase.2002-004@gsa.gov
cc: ncrage1@yahoo.com
Subject: ATTN: Laurie Duarte FAR case 2002-004

As a member of Illinois Local 649 Operating Engineers, I am writing to support the rule changes to make off site work covered by the Davis Bacon Act. Large work projects often have multiple staging and support sites because of the nature of the work. It is important to me that workers at all sites connected with a project be subject to the same rules and pay levels.

These changes will enhance the abilities of workers to care for their families by increasing the wage package they will receive. These changes will work for everyone.

Robert K Ulm
Operating Engineer
583 W Fort Street
P O Box 26
Farmington, IL 61531

2002-004-56

"Reta Coats"
<ncrage1@yahoo.com
>

02/22/2004 08:16 AM

To: farcase.2002-004@gsa.gov
cc: ncrage1@yahoo.com
Subject: ATTN: Laurie Duarte FAR case 2002-004

As the wife of an Illinois Local 649 Operating Engineer, taxpayer, and concerned citizen, I am writing to support the rule changes to make off site work covered by the Davis Bacon Act. Large work projects often have multiple staging and support sites because of the nature of the work. It is important to me that workers at all sites connected with a project be subject to the same rules and pay levels.

These changes will enhance the abilities of workers to care for their families by increasing the wage package they will receive. These changes will work for everyone.

Reta L Ulm
Software Engineer
583 W. Fort Street
P O Box 26
Farmington, IL 61531

2002-004-57

"Reta Coats"
<ncrage1@yahoo.com
>

To: farcase.2002-004@gsa.gov
cc: ULMDVM@aol.com
Subject: ATTN: Laurie Duarte FAR case 2002-004

02/22/2004 08:13 AM

As a member of Illinois Local 649 Operating Engineers, I am writing to support the rule changes to make off site work covered by the Davis Bacon Act. Large work projects often have multiple staging and support sites because of the nature of the work. It is important to me that workers at all sites connected with a project be subject to the same rules and pay levels.

These changes will enhance the abilities of workers to care for their families by increasing the wage package they will receive. These changes will work for everyone.

Matthew K Ulm
Operating Engineer
78 N Cedar Street
Farmington, IL 61531

"LONI & KELLY GROSENBACH" <gbach@mtco.com>

02/23/2004 02:07 AM
Please respond to "LONI & KELLY GROSENBACH"

To: farcase.2002-004@gsa.gov
cc:
Subject: re:FAR case 202-004

2002-004-58

I am writing to urge the Federal Aquistition Regulation Council to adopt the proposed rule to require construction contractors to pay Davis-Bacon Act prevailing wages at secondary worksites. As a member of the central Illinois construction community, during the last decade I have personally observed a perversion of the Davis-Bacon Act by many unscrupulous contractors. More and more, rather than pay mandated DBRA wages, these companies simply set up a site a mile down the road to fabricate portions of public works construction projects historically performed on site. Even though these secondary sites are set up to prefabricate parts for the primary project, these contractors claim to be exempt from prevailing wages for this fabrication and for the transportation to the primary site. This loophole should not be allowed to continue, as being against the intent of the Davis-Bacon Act, and being against public policy as well. If an asphalt or concrete plant is set up to serve a large highway project, the question of proximity to the project should have no bearing on the wages paid. The intent of the Davis-Bacon Act is clearly being circumvented through this manipulation, and could be quickly clarified by adoption of the proposed rules. Thank you for your consideration.

Loni L. Grosenbach
Citizen, Taxpayer, Operating Engineer
307 Stahl Ave
Washington, IL. 61571

Audubon-Exira Ready Mix Inc

♦♦♦

110 North Division ♦ Audubon IA 50025-1122
Phone 712-563-4209 ♦ Fax 712-563-2171

2002-004-59

February 14, 2004

Ms.Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

Re: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duatre

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters,68 Fed. Reg. 74403. Audubon-Exira Ready Mix is a family owned and operated Ready mix company. We service a 35 mile radius of our location in southwest Iowa serving mainly agriculture and construction, which is where this definition would impact us. Our yearly revenues run $750,000 to 900,000.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work", the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. We are currently furnishing concrete to a waste water treatment plant in Audubon, IA. The backpay for secondary sites provision would cost our company thousands of dollars on this project alone, costs which we cannot recoup because pricing has already been established. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small business and publish it for public comment.

Sincerely,

Daniel D Schmidt, Treasurer
Audubon-Exira Ready Mix Inc.

Rcvd
2/23/04

Associated Builders and Contractors, Inc.

2002-004-60

February 20, 2004

Ms Laurie Duarte
General Service Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

Re: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Associated Builders and Contractors, Inc. ("ABC") hereby submits its comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. ABC is a national trade association of more than 23,000 construction contractors and related firms that share the belief that construction work should be awarded and performed on the basis of merit, regardless of labor affiliation. ABC's membership includes both unionized and non-union contractors, many of whom perform work on construction projects covered by the Davis-Bacon and related acts.

Many of ABC's member firms perform work at locations geographically distant from the site of the work covered by the Davis-Bacon Act on particular projects. Such work includes transportation of materials to and from construction sites, pre-fabrication of construction components, batch plant operation and other related tasks. ABC and/or some of its members have participated in litigation concerning the proper geographic scope of the Act and the validity of the Department of Labor's (DOL's) definitional rules on site of the work issues. See, e.g., Building and Construction Trades Dept., AFL-CIO v. United States Department of Labor Wage Appeals Board, 932 F. 2d 985 (D.C. Cir. 1991); Ball, Ball and Brosamer v. Reich, 24 F. 3d 1447 (D.C. Cir. 1994); L.P. Cavett Co. v. U.S. Department of Labor, 101 F. 3d 1111 (6th Cir. 1996).

For reasons explained below, ABC believes that certain aspects of the Proposed Rules violate the settled holdings of these court decisions and the plain language of the Act, and should be withdrawn. The FAR Council is not obligated to adhere to regulations promulgated by DOL which are themselves contradicted by the plain language of the Davis-Bacon Act and court decisions.

rcvd 2/23/04

4250 North Fairfax Drive, 9th Floor • Arlington, VA 22203 • 703.812.2000 • www.abc.org

004-60

Additionally, the FAR Council has incorrectly certified that this rule will not have a significant impact on a substantial number of small business under the Regulatory Flexibility Act.

1. Background.

In the above cited cases, the courts have held the "unambiguous" meaning of the Davis-Bacon Act to be that it "applies only to employees working directly on the physical site of the public building or public work under construction." Ball, Ball and Brosamer v. Reich, supra, 24 F. 3d at 1452. The courts have therefore invalidated those aspects of the Department's regulations which in any way expand the scope of prevailing wage requirements beyond the physical site of a public building or work.

In Building and Construction Trades Dept., AFL-CIO v. United States Department of Labor Wage Appeals Board (Midway Excavators), 932 F. 2d 985 (D.C. Cir. 1991), the court held that material delivery truckdrivers who come onto a site of construction work to drop off construction materials are not covered by the Act, regardless of whether they are employed by the government contractor. The court therefore struck down former DOL regulation 29 C.F.R. 5.2(j) (defining "construction"), which arguably imposed such coverage, as being inconsistent with the language of the Act.

Because Midway Excavators did not expressly invalidate DOL's former rule 5.2(l) (defining "site of the work"), the Department initially attempted to accommodate the court's decision by limiting coverage to transportation between the actual construction location and a facility which is dedicated to such construction and deemed a part of the site of the work within the meaning of 5.2(l). However, the subsequent court decisions in Ball, Ball and Brosamer v. Reich, supra, and L.P. Cavett Co. v. U.S. Department of Labor, supra, flatly rejected DOL's persistent efforts to use 5.2(l) to extend the Act's coverage beyond the geographic site of the work/building being constructed and beyond those facilities in "actual or virtual adjacency" to the site. In Ball, Ball and Brosamer, the D.C. Circuit held that borrow pits and batch plants located a mere two miles from an aqueduct under construction could not be covered by the Act, even though they were dedicated exclusively to the covered construction project. In L.P. Cavett, the Sixth Circuit rejected DOL's efforts to include a dedicated facility located three miles away from a federal highway under construction, as well as the process of transporting materials from the non-covered facility to the site of the construction work. As the Sixth Circuit observed in L.P. Cavett: "While a facility in virtual adjacency to a public work site might be considered part of that site, a facility located two (or in this case three) miles away from the site would not." Thus, Rule 5.2(l) was declared invalid, just as 5.2 (j) had been previously.

In response to these repeated judicial reversals, DOL issued its present "site of the work" rules during the final days of the Clinton Administration. In some respects, the revised rules 5.2(j) and (l) reflected long overdue recognition by DOL that the courts meant what

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they said (i.e., that Davis-Bacon's coverage is geographically limited to the physical site of the building/work under construction). Thus, DOL concluded that it "cannot assert Davis-Bacon prevailing wage coverage with respect to material or supply sources, tool yards, job headquarters, etc., which are dedicated to the covered construction project unless they are adjacent or virtually adjacent to a location where the building or work, or a significant portion thereof, is being constructed." 65 Fed. Reg. 57272-3 (DOL's NPRM Sept. 21, 2000). DOL revised Rule 5.2(j) to make clear that transportation of materials to and from the site of the work is ordinarily not covered by the Act, and the Department revised Rule 5.2(l) to limit the definition of the site of the work, with one exception, to "the physical place or places where construction called for in the contract will remain … and other adjacent or nearby property."

At the same time, DOL's revised rules contained new provisions that arguably *expanded* the Act's coverage beyond the site of the work in new and unprecedented ways. In particular, the Department for the first time included within the regulatory definition of "site of the work" any distant location "established specifically for the purpose of constructing a significant portion of a public building or public work." 29 C.F.R. 5.2(l)(1) (explained at 65 Fed. Reg. at 57273). The revised Rule 5.2(j) further violated the Act by seeking to extend coverage to transportation between such distant "secondary" sites and the true site of the work, all in a manner directly contrary to the court decisions. DOL asserted that the exceptions contained in its new rules would be "rarely" utilized, limited to "new construction technologies" involving "major segments of complex public works, such as lock and dam projects and bridges."

The FAR Council has now proposed to revise FAR Subpart 22.4, Labor Standards for Contracts Involving Construction, and corresponding clauses in FAR Part 52 to implement the Department of Labor's revised definitions of "construction" and "site of the work," and to make certain additional changes. As is further explained below, the FAR Council should modify its proposed rules so as to implement only those DOL regulations that are not directly contradicted by judicial authority and/or otherwise exceed the coverage limits of the Davis-Bacon Act. In addition, to the extent that the FAR Council's proposed rules impose new substantive requirements nowhere authorized by DOL's revised rules, such new requirements are themselves unauthorized and should be withdrawn.

2. Comments on the Council's Specific Proposals

a. The FAR Council Should Not Expand the Definitions of "Site of the Work" or "Construction" to Include "Secondary Sites" At Which "Significant Portions" of the Public Building or Work Are Constructed.

The primary substantive change in the FAR Council's proposed rules is to implement DOL's revised definitions of "construction" and "site of the work." As discussed above, DOL's rules are contradicted by the court decisions applying plain language of the Davis-

004-60

Bacon Act. The Act's language, as these courts have held, does not allow any government agency to impose prevailing wage requirements beyond the physical location where the project is to remain after construction is completed. Building and Construction Trades Dept., AFL-CIO v. United States Department of Labor Wage Appeals Board, 932 F. 2d 985 (D.C. Cir. 1991); Ball, Ball and Brosamer v. Reich, 24 F. 3d 1447 (D.C. Cir. 1994); L.P. Cavett Co. v. U.S. Department of Labor, 101 F. 3d 1111 (6th Cir. 1996). DOL's attempt to evade these judicial holdings by declaring certain "dedicated" facilities to be "secondary" sites of construction is simply not authorized by the Act or by the courts. The FAR Council is not required to adhere to DOL's unauthorized rule and should not implement it.

Equally arbitrary is DOL's proposal to cover drivers of materials under a revised 29 CFR 5.2 (j)(1)(iv) for time spent transporting materials or pre-fabricated construction components between the newly expanded "secondary" site and the traditional site of the work. The court decisions could not be more clear: the Department has no authority to extend the Act's coverage to the nation's highways or rivers for the action of transporting items of any kind to or from a construction site, or between sites of any kind. The sole explanation given in the Notice is that the site of the work is "literally moving" between the two work sites when pre-fabricated segments of a project are transported. The premise is completely unsupported and contrary to law.

Under Reorganization Plan No. 14, DOL has been vested with primary authority within the executive branch to interpret the Act's coverage. However, when DOL exceeds the scope of its authority, as when the Department's rules conflict with the statute itself, no agency is compelled to abide by DOL's invalid regulations. See North Georgia Bldg. and Const. Trades Council v. Goldschmidt, 621 F. 2d 697 (5th Cir. 1980).

Here, DOL's rules violate the plain language of the Act by extending coverage to facilities that are geographically distant from the site of the work being constructed. Numerous court decisions have reinforced the Act's language and have made plain that DOL's new rules are invalid. Under such circumstances, the FAR Council is not required to implement DOL's rules and should not do so.

b. The Proposed Revision to FAR 52.222-6 Improperly Imposes Retroactive Application of Wage Determinations to Secondary Sites.

In one substantive respect, the FAR Council's proposal cannot claim to derive its authority from the DOL regulation. Specifically, the Council proposes to revise FAR 52.222-6 by mandating that any subsequent incorporation to the contract of a wage determination for a secondary site shall become retroactively effective from the first day work under the contract was performed at that site, without any adjustment in contract price or estimated cost. This proposal appears to establish different wage determination criteria for "secondary" sites than is required of wage determinations generally. Furthermore, the proposal appears improperly to shift to the contractor the burden of

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determining the applicability of a wage determination to any portion of a construction project.

It is the government's responsibility to inform contractors of their rights and obligations under the Davis-Bacon Act, typically through the bid specifications on a project covered by the Davis-Bacon or related acts. Absent advance written notice of prevailing wage obligations, it is a violation of due process to impose retroactive obligations on any contractor, particularly without opportunity for adjustment in price or estimated cost. DOL's regulations restrict the impact of modifications in wage determination. 29 C.F.R. Part 1. In this respect, the proposed rule appears to depart from DOL's restrictions in a manner which is not authorized by the Act.

Finally, the FAR Council proposes to revise the same clause in an additional way that does track a DOL regulation, i.e., by mandating that wage determinations for the primary site of work shall apply to any construction occurring during transport of portions of a building or work between the secondary site and the primary site. The result of this proposal (and the DOL regulation) could be to apply wage determinations hundreds of miles distant from the geographic area for which they were intended. Again, this application is a fundamental defect in the DOL language, contrary to the plain language of the Act, and the FAR Council should not adopt this DOL provision.

2. Incorrect Certification under the Regulatory Flexibility Act

The FAR Council has failed to comply with the Regulatory Flexibility Act. Under the Regulatory Flexibility Act and the subsequent amendments contained in the Small Business Regulatory Enforcement Fairness Act, federal agencies have the responsibility to conduct an analysis of the impact of a rulemaking on small businesses. The FAR Council must determine if a rule has a significant impact on a substantial number of small firms.

In this case, the FAR Council's certification is wholly inadequate in that the Council fails to identify what and how many small firms would be affected, what costs would be associated with the rule, and what the economic impacts would be on the affected entities. Moreover, the FAR Council when evaluating this information and presenting it to justify a certification must express what threshold it used to determine the impact was not "significant" and the number of firms affected was not "substantial." The terms of the certification must be transparent in order to allow for public review and comment of the FAR Council's underlying premises. No threshold analysis was provided by the FAR Council.

In the case of this rulemaking, the rule will impact a substantial number of contractors on current and future federal construction projects. Construction firms are primarily very small companies. There are 691,110 employer construction firms in the United States according to 2001 data from the U.S. Bureau of the Census. In addition, there are another

004-60

2 million self-employed. Under the U.S. Small Business Administration regulations, the definition of small construction firm varies among the various industry sectors. However, for general purposes, the definition of less than 100 employees can serve for purposes of a rational analysis. Using 2001 data of the U.S. Bureau of the Census, 98 percent of construction employers are small businesses. Obviously the universe of potentially affected firms is substantial.

Firms contracted to perform federal construction as general or subcontractors will be significantly impacted by this rule. In 2002, federal construction completed was worth $16.3 billion according to the U.S. Department of Commerce. In Fiscal Year 2003, the federal government according to congressional Appropriation Committee records set spending for transportation projects at $42.9 billion, water and environment projects at $15.6 billion, and buildings of other types at $10.5 billion. Clearly, these figures include large payrolls that will be significantly expanded given the broad scope of the proposed rule.

In particular, the rule as written would require back pay of prevailing wages through 2000 for secondary sites of current projects and pay in future payrolls at secondary sites through the remainder of the term of the contract. These cost by any measure will be significant for any business faced with this overly broad and legally challengeable definition of 'site of work.'

The FAR Council is proposing to implement these costs upon contractors without any adjustment in contract price. No rationale basis has been provided by the FAR Council for certifying this rule under the Regulatory Flexibility.

If the FAR Council proceeds with the rulemaking, ABC urges the Council to publish for public comment an initial regulatory flexibility analysis as required by the Regulatory Flexibility Act before proceeding.

While federal agencies have not been successful meeting the small business goals set by Congress for procurement, small construction contractors make up the vast majority of subcontractors in federal procurement. Small contractors are building America's courthouses, roads, bridges, airports, and military installations. This rule will be devastating to this small business sector.

Conclusion

For the reasons stated above, portions of the Proposed Rule are arbitrary and capricious and contrary to the plain language of the Davis-Bacon Act, as interpreted by clear holdings of the courts. The FAR Council should not adopt those DOL provisions that exceed the Act's coverage, based upon the clear holdings of the courts of appeals. In addition, the FAR Council should not on its own impose the Act's prevailing wage requirements beyond the site of the work, as that term has been defined by the courts.

004-60

Finally, the FAR Council has failed to comply with the Regulatory Flexibility Act in the publication of this proposed rule.

Respectfully submitted,

Anita Drummond
Director of Legal and Regulatory Affairs

cc: Thomas Sullivan, Chief Counsel for Advocacy, U.S. Small Business Administration

2002-004-61

February 19, 2004

Dear Council Members:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. RJ Martin Electrical Contracting is a commercial and industrial electrical contractor located in Bedford Heights, Ohio.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the Department of Labor's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with back pay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Respectfully,

Robert J. Martin

Robert J. Martin
Chief Executive Officer

Rec'd 2/23/04

2002-004-62

THE EASTERN SALES & ENGINEERING CO.
6102 FALLS ROAD
BALTIMORE, MD 21209
(410)377-0123
(410)377-0179 FAX

February 23, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street N.W.
Room 4035
Washington, DC 20405

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters (G8 Fed Reg 74403). My company, The Eastern Sales and Engineering Company, is a small, family owned electrical contractor. We install, service and maintain lighting for companies and agencies in Maryland. We also provide other electrical services.

The Council should not extend the coverage of the Davis Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violated settle court decisions concerning the proper geographic scope the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work", the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, especially small businesses, like mine. The cost associated with back pay for secondary sites on on-going projects would be wholly absorbed by small contractors. We have just been awarded a large contract, and if we had to retroactively back pay, we would suffer a significant loss on the contract, enough to cause a negative financial impact for the year. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

David Hessler
The Eastern Sales and Engineering Company

AMERICAN BAR ASSOCIATION

Section of Public Contract Law
Writer's Address and Telephone

2002-004-63

Smith, Currie & Hancock LLP
Suite 2600 Harris Tower
233 PeachtreeSt., NE
Atlanta, GA 30303-1530
Phone (404) 582-8027
Fax (404) 688-0761
hjbell@smithcurrie.com

February 23, 2004

Via Hand Delivery and Electronic Mail

General Services Administration
FAR Secretariat (MVA)
1800 F Street, N.W.
Room 4035
Attn: Laurie Duarte
Washington, D.C. 20405

Re: FAR Case 2002-004
Labor Standards for Contracts Involving Construction

Dear Ms. Duarte:

On behalf of the Section of Public Contract Law of the American Bar Association ("the Section"), I am submitting comments on the above-referenced matter. The Section consists of attorneys and associated professionals in private practice, industry, and Government service. The Section's governing Council and substantive committees have members representing these three segments to ensure that all points of view are considered. By presenting their consensus view, the Section seeks to improve the process of public contracting for needed supplies, services, and public works.

The Section is authorized to submit comments on acquisition regulations under special authority granted by the Association's Board of Governors. The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, therefore, should not be construed as representing the policy of the American Bar Association.

We have reviewed the proposed FAR changes and believe they are substantively correct and fairly reflect the current Department of Labor ("DOL") regulations and especially the new definitions. *See* FAR § 22.401, *Definitions*.

Received 2/23/04 MVA

2002-004-63

There are, however, structural inconsistencies in the prescribed clauses. The proposed FAR 52.222-6, *Davis-Bacon Act*, includes a definition of "site of the work," but none of the other definitions in FAR 22.401, *Definitions*. Similarly, the *Subcontracts* clauses in 52.222-11 includes a definition of "construction, alteration and repair," but none of the other definitions in FAR 22.401. Either all of the definitions should be included in these two clauses (FAR 52.222-6 and FAR 52.222-11) or the definitions of FAR 22.401 should be incorporated by reference. We recommend that the definitions of FAR 22.401 be incorporated by reference instead of by full text.

The Section appreciates the opportunity to provide these comments and is available to provide additional information or assistance as you may require.

Sincerely,

H.J. Bell, Jr.

Hubert J. Bell, Jr.
Chair, Section of Public Contract Law

cc: Patricia H. Wittie
Robert L. Schaefer
Michael A. Hordell
Patricia A. Meagher
Mary Ellen Coster Williams
Norman R. Thorpe
Council Members
Gilbert J. Ginsburg
Paul Greenberg
E. Carl Uehlein, Jr.
David Kasanow

International Union of Operating Engineers
1125 SEVENTEENTH STREET NORTHWEST ★ WASHINGTON, D. C. 20036
AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS
OFFICE OF GENERAL PRESIDENT • (202) 429-9100

2002-004-64

February 23, 2004

HAND DELIVERED

General Services Administration
FAR Secretariat
1800 F Street, N.W.
Room 4035
Washington, DC 20405

Attn.: Laurie Duarte

Dear Ms. Duarte:

On behalf of its 400,000 members, the International Union of Operating Engineers submits these comments in response to the proposed rule amending the Federal Acquisition Regulations to implement the Department of Labor's revisions to Davis-Bacon Act regulatory definitions of "construction" and "site of the work." 68 *Federal Register* 74404 (December 23, 2003).

The IUOE represents heavy equipment operators and mechanics throughout the United States. IUOE members include workers who operate and maintain equipment at dedicated batch plants, borrow pits, and fabrication plants and workers who operate and maintain equipment on projects involving new underwater construction technologies.

The IUOE's comments are divided into four sections. In the first section, the IUOE supports the Councils'[1] adoption in 48 C.F.R. §52.222-6(a)(i) and (ii) of the DOL regulation (29 C.F.R. §5.2(l)(1)) recognizing that multiple sites of work can exist for one project regardless of the distance of "secondary" sites from the final resting place of a public work.

In the second section, the IUOE opposes the Councils' adoption in 48 C.F.R. §52.222-6(a)(iii) of the phrase "adjacent or virtually adjacent" from the DOL's regulation 29 C.F.R. §5.2 (l) (2), because, as discussed herein, any geographic or limitation test places physical boundaries on Davis-Bacon Act coverage that were not intended by the Act. As discussed herein, "directly on the site of the work" means any physical location exclusively dedicated, or nearly so, to performing work in furtherance of the contract even if significant portion of public works are not constructed at the site and such location exists for the purpose of furnishing materials or supplies.

[1] Civilian Agency Acquisition Council and Defense Acquisition Regulations Council

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The IUOE opposed the DOL's inclusion of the phrase "adjacent or virtually adjacent" in its comments to the DOL and renews its objections here.

In the third section, the IUOE supports the Councils' implicit adoption of the DOL's decision to exclude a definition of "adjacent or virtually adjacent." 48 C.F.R. §52.222-6(a)(iii). As stated by the DOL in the preamble to the revised site of the work regulation, the DOL left the "question to be determined on a case-by-case basis, given that the actual distances will vary depending upon the size and nature of the project in question." 65 *Fed Reg.* 80268, 80270 (Dec. 20, 2000).

And, in the last section of these comments, the IUOE submits that contractors should be reimbursed for increased labor costs when the wage determinations at an actual secondary site are higher than the wage determinations at an intended secondary site. As discussed in Section IV, the shifting of the financial burden to the contractor is contrary to what the DOL envisioned when it recognized that multiple sites of work may exist for a project.

I. IUOE SUPPORTS THE COUNCILS' ADOPTION OF THE DOL REGULATION RECOGNIZING THAT MULTIPLE SITES OF WORK CAN EXIST FOR ONE PROJECT REGARDLESS OF THE DISTANCE OF SECONDARY SITES FROM THE FINAL RESTING PLACE OF A PUBLIC WORK

The IUOE supports the Councils' adoption of the DOL's revised definition of the DOL's "site of the work" regulation as set forth in 29 C.F.R. §5.2(l)(1). 65 *Fed. Reg.* 80268 (Dec. 20, 2000). In promulgating the revised rule, the DOL recognized that new construction technologies have been developed that make it practical and economically advantageous to build major segments of complex public works, such as lock and dam projects and bridges, at locations some distance up-river from the locations where the permanent structures will remain when their construction is completed. *Id.* at 80271.

The DOL's regulation correctly recognizes that the site of the work is not limited to "the place or place(s) where the construction called for in the contract will remain when work on it has been completed" (*i.e.*, former 29 C.F.R. §5.2(l)(1)). Indeed, nothing in the statute intimates that coverage is limited to the places where the public work will remain and areas adjacent thereto. The DOL's new regulation (29 C.F.R. §5.2(l)(1)) recognizes that geographic proximity is irrelevant to a determination of whether a location where construction of a "significant portion" of the project occurs is a site of the work established specifically for the performance of the project.

As noted by the DOL, the DOL's application of the geographic test under its former regulations in determining whether "actual" construction locations (as distinguished from nearby sites used for furnishing materials or supplies to the project) are sites of the work has led to "inconsistent results." 65 *Fed. Reg.* at 80274. The IUOE fully supported the DOL's decision to eliminate physical boundaries in Section 5.2(l)(1) in determining whether a location where actual instruction occurs is a site of the work, and now supports the Councils' adoption of Section 5.2(l)(1). 48 C.F.R. §52.222-6(a)(i) and (ii).

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In recognizing that multiple sites of work may exist for one project, the DOL considered three different projects where the majority of the actual construction work occurred at a location other than the final resting place of the project. One such project, the Braddock Dam project on the Monongahela River in Pennsylvania, involved the construction of two "massive floating structures, each about the length of a football field, which would comprise the vast bulk of the new gated dam." 65 *Fed. Reg.* at 80273. As the DOL observed, the actual construction of these floating structures was at an up-river location on or near the water, and the structures were then floated down the river to the point where they were submerged into the dam and gate piers. *Id.*

Recognition that multiple sites of work exist in some circumstances squarely addressed the concerns raised by the Braddock project. Indeed, without the floating structures, the public work contemplated in the contract would not have existed. The floating structures were, in effect, the public work, and the site where the structures were constructed was an actual physical site of construction. 65 *Fed. Reg.* at 80274. Under the DOL's current regulations, the site where the floating structures were constructed is a "site of the work", because both parts of 5.2(l)(1)'s two-part test are satisfied. The construction site of the floating structures is "any other site where a significant portion of the public building or public work is constructed" and such site was "established specifically for the performance of the contract or project".

Two other examples cited by the DOL in promulgating the revised rule of "off-site" locations where actual construction work took place involved the construction of modular cells for the Titan missile service tower (*Titan IV Mobile Service Tower*, WAB Case No. 89-14 (May 10, 1991)) and 405 military housing units. *ATCO Construction, Inc.*, WAB Case No. 86-1 (August 22, 1986). *ATCO* involved the construction of about 405 military housing units workers at temporary facility in Portland, Oregon established exclusively for the construction of the units, which were then shipped 3,000 miles for final placement at Adak Naval Air Station in the Aleutian Islands, Alaska. *Titan* involved the construction of 13 modular cells at Tongue Point, Oregon, and the transportation of the modular cells 1,000 miles by barge to Vandenberg Air Force Base in California. The largest of the modular units was approximately 41 feet wide by 75 feet long by 50 feet high and weighed about 300 tons, or the equivalent of a three-story building. In *Titan*, laborers and mechanics performed 770,000 hours at Tongue Point without Davis-Bacon coverage. This amounted to a denial of coverage to about 385 full-time workers at 40 hours per week for one year based on 50 weeks of work.

With regard to the three cases cited above, the DOL stated (65 *Fed. Reg.* at 80274):

> When a significant portion of a project, like the 300-foot floating structures that comprise the Braddock Lock and Dam, the three-story Titan missile service tower modules, or the 405 Adak housing units, is constructed at a secondary location, such location is, in actually the physical site of the public work being constructed. ... [I]t is the covered construction project.

As observed by the DOL, under its former regulation which did not recognize multiple sites of work, the WAB reached opposite and inconsistent results in *ATCO* and *Titan*. 65 *Fed. Reg.* at 80274. In *ATCO*, the WAB reached the right results concerning Davis-Bacon coverage,

but for the wrong reasons. Instead of stating that the geographic test is meaningless when actual construction work occurs at a site other than the place where it will remain when the construction project is completed, the WAB applied the geographic test set forth in §5.2(l)(2) of the former DOL regulation. In so doing, the WAB stated that "Portland is about as close in the Continental United States as you can get to Adak Island. Mainland Alaska isn't that much closer for purposes of this case." *ATCO*, slip op. at 5. The WAB's failure to find that the DOL's site of work regulation did not contemplate the circumstances presented in *ATCO* - *i.e.*, an "actual" construction site other than where the public work will remain, and thus the regulation was inapplicable, the WAB applied the geographic test in a manner that left the DOL vulnerable to criticism from the courts.[2] It clearly strains credulity to state that geographic locations 3,000 miles apart are in "reasonable proximity" to each other.

In distinguishing the facts in *Titan* from those in *ATCO*, the Wage Appeals Board continued to consider geographic proximity, and found that the Tongue Point location did not satisfy the geographic prong of the two-part site of the work test:

> [T]he unique circumstances presented in ATCO permit the conclusion that the Board viewed the Portland facility 3,000 miles distant from Adak Island - as the "site of the work", essentially standing in the stead of the Adak location. In that sense, it is relevant to note that "Portland is about as close in the Continental United States as you can get to Adak", ...to note that almost all the work except for the final placement of the housing was performed at the Portland facility, and that similar circumstances are not presented in this case.

The above-quoted language demonstrates that the WAB's decision in *Titan* is internally inconsistent. Despite the language in the former regulation limiting the site of work to "physical place or places where the construction called for in the contract will remain when work on it has been completed" (5.2(l)(1)), the WAB found that the Portland site stood in "stead" of the Adak site. *Id.* On the one hand, the WAB viewed itself as constrained by the geographic limitations set forth in the current regulation. Yet, on the other, its rationale for finding that Tongue Point (1,000 miles away) did not satisfy the geographic limitations even though Portland, Oregon (3,000 miles away) met the geographic requirement was based on a misapplication of the literal language of the former 5.2(l)(1). Such inconsistency was the inevitable result of applying a geographic test in circumstances where such a test was clearly inapplicable.

As a result of advances in construction technology, the DOL amended its former regulation in a manner that sought to effectuate the intent of language written about 70 years ago to a new era of construction. In enacting the Davis-Bacon Act, Congress clearly intended to cover actual construction sites even though it did not envision that "significant portions" of

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[2] The court stated that the "Secretary attempts to find any tiny crack of ambiguity remaining in the phrase 'directly upon the site of the work' and cram into it a regulation that encompasses other sites miles from the actual location of the public works – in this case two miles, in another as much as 24 miles and in still another 3,000 miles from the *actual construction location*". *Ball, Ball & Brosamer v. Reich*, 24 F.3d 1447, 1452 (D.C. Cir. 1994)(emphasis added). The court clearly failed to appreciate that Portland, Oregon was the "actual" construction location.

public works could be constructed other than in the final resting place of the public work. In 1935, the drafters of the Davis-Bacon Act could not have envisioned that it would be feasible for whole sections of public works to be "constructed up-river and floated down-river to be put in place to form the structure being built."[3] 65 *Fed. Reg.* at 57273. Nor could the drafters have envisioned that modular cells the size of three-story buildings could be built in a location 1,000 miles from their final resting place or that 405 housing units could be constructed on a concrete slab 3,000 miles from their final location. Despite the fact that Congress did not foresee *where* work in furtherance of the contract might be performed, it envisioned that work in furtherance of the contract would be covered.

It is a "general rule in the construction of statutes that legislative enactments in general and comprehensive terms, and prospective in operation, apply to persons, subjects and businesses within their general purview and scope, though coming into existence after their passage, where the language fairly includes them." *Cain v. Bowlby*, 114 F.2d 519 (10th Cir. 1940). (See 2A *Sutherland Statutory Construction* 49.02, and *Jerome H. Remick & Co. v. American Automobile Accessories Co.*, 5 F.2d 411 (6th Cir. 1925), *cert. denied*, 269 U.S. 556 (1925), where the court held that the broadcasting by radio for profit of a copyrighted musical composition infringed the statutory copyright even though radio was developed after the enactment of the Copyright Act). In view of the fact that the relevant language in the Davis-Bacon Act is both broad and prospective, the Davis-Bacon Act includes work performed in furtherance of the contract through new construction techniques at locations other than their final resting place.

The DOL recognized in promulgating its revised rule that even under the federal courts' interpretations of "directly on the site of the work" in *Ball, Ball and Brosomer v. Reich*, 24 F.3d 1447 (D.C. Cir. 1994) and *L.P. Cavett Company v. U.S. Department of Labor*, 101 F.3d 1111 (6th Cir. 1996), the construction of the floating structures for the Braddock Dam, and other such projects using innovative construction techniques would be covered under the Davis-Bacon Act. 65 *Fed. Reg.* at 80274. Neither the *Cavett* nor *Ball, Ball & Brosamer* courts contemplated actual construction work at locations other than where the public work will remain.[4] The court stated that employed directly on the site of the work "means that only employees working directly on the physical site of the public work under construction have to be paid prevailing wages." *Cavett*

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[3] In applying a 50-year old statute to an "industry undergoing a great change as a result of modern electronic equipment", the court took judicial notice of the fact that electronic funds transfer systems "were unknown in 1927, and therefore could not have been conceived or within the contemplation of Congress." *State Banking Board v. Bank of Oklahoma*, 409 F. Supp. 71 (N.D. Okla. 1975)

[4] In the context of a batch plant located two miles from location of the public work, the *Ball, Ball & Brosamer* court stated that there was "no ambiguity in the text" and that "the ordinary meaning of the statutory language is that the Act applies only to employees working directly on the physical site of the public building or public work under construction". *Ball, Ball & Brosamer* at 1452, *quoting Building and Construction Trades Department, AFL-CIO v. U.S. Department of Labor Wage Appeals Board*, 932 F. 2d 985, 990 (D.C. Cir. 1991). Likewise, in the context of a quarry located more than three miles from the location of the public work, the *Cavett* court found that the statutory language is "not ambiguous". *Cavett*, 101 F. 3d 1111, 1115.

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101 F.3d at 1115. There is no doubt that the place where the construction site of the floating structures is "the actual physical site of the public work under construction". *Id.*

There is no rational basis for the selection of one site of work over another where substantial construction work occurs at more than one site. A comparison of the relative number of hours devoted to construction on a case-by-case basis would, as *Titan* illustrates, deny coverage to workers who build integral or "significant portions" of a public work.[5] Without the changes brought about by the proposed regulations, completely illogical result will occur. As recognized by the DOL, "[a]t its most extreme, it is possible that a project may be built in its entirety at one location and then moved to its final resting place". 46 *Fed. Reg.* at 57273. The DOL further recognized that a denial of coverage in such circumstances is contrary to both the "language" and "intent" of the Davis-Bacon Act. *Id.*

In sum, where significant portions of a public work are constructed at sites other than where the public work will remain and those sites are exclusively dedicated to the project (Braddock, Titan, and ATCO), current DOL regulation 5.2(l)(1) ensures Davis-Bacon coverage applies to such projects. The IUOE urged the DOL to recognize sites of work other than where the public work will remain with no geographic boundaries placed upon where such sites can be located for purposes of Davis-Bacon coverage and now supports the Councils' adoption of the DOL's current site of the work regulation. 48 C.F.R. §52.222-6(a)(i) and (ii).

II. "DIRECTLY UPON THE SITE OF THE WORK" MEANS WHERE WORK IN FURTHERANCE OF THE CONTRACT OCCURS

Technological changes and construction history illustrate that the words "directly on the site of the work" clearly cannot be limited to areas "adjacent or virtually adjacent" to a site of the work defined in current DOL regulation 5.2(l)(2), but must encompass all sites where construction activity occurs. Construction is construction regardless of where it occurs, and workers should not be deprived of statutory protections simply because construction developments, such as the central-mix concrete batch plants, have gradually allowed more and more work to be performed at ancillary sites. The DOL's use of the words "adjacent or virtually adjacent" in current regulation in 5.2(l)(2) places geographic boundaries on coverage that are inconsistent with the purpose of the Act, which is to cover all work performed in furtherance of the contract. The IUOE urges the Councils to exclude the geographically limiting language from 48 C.F.R. §52.222-6(a)(iii).

In some cases, nonsensical results would be reached if directly on the site of the work literally meant on the public building or public work under construction. As noted by the ARB in *Bechtel Constructors, Corp.*, ARB Case 97-149 (March 25, 1998), in "constructing a building in an urban area, construction cranes are often positioned adjacent to the permanent site of

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[5] In *Titan*, the Administrator compared the amount of work performed at Tongue Point (40 percent) and Vandenberg (60 percent) by the subcontractor in concluding that Tongue Point was not the actual tower construction site. The WAB agreed with the BCTD's position that "inclusion within the site of work of a facility adjacent or nearby to the actual construction area ordinarily is not dependent on the comparative amount of work performed at the two locations".

construction. It would not be possible to place the crane where the building is to stand". There is a presumption that Congress does not intend an "absurd result." *In re Pacific Atlantic Trading Co.*, 64 F.3d 1292, 1303 (9th Cir. 1995).

The fact that Congress used "public buildings or public works" in the same section of the Davis-Bacon Act, 40 U.S.C. §276a, but did not state "directly on the site of the public buildings or public works" further demonstrates that Congress did not intend the word "work" to mean the "public building or public work." There is a presumption that Congress purposefully used different language when it chose to use the word "work" instead of "public buildings or public works." "'[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'" *Russello v. United States*, 464 U.S. at 23, *quoting United States v. Wong Kim Bo*, 472 F.2d 720, 722 (5th Cir. 1972); *Florida Public Telecommunications Ass'n, Inc. v. F.C.C.*, 54 F.3d 857 (D.C. Cir. 1995) (The usual canon is that when Congress uses "different language" in the same statute, it "does so intentionally"); *Cabell Huntington Hospital, Inc. v. Shalala*, 101 F.3d 984 (4th Cir. 1996)("Where Congress has chosen different language in proximate subsections of the same statute, courts are obligated to give that choice effect").

This presumption is buttressed by the amendments to the 1935 Act. When the original Act was passed in 1931, it did not contain the words "mechanics and laborers employed directly upon the site of the work." The current language was added to the Act in 1935. Instead the 1931 Act read: "mechanics and laborers employed directly upon the site of the *public building* covered by the contract shall be not less than the prevailing rate of wages for work of a similar nature..." Davis-Bacon Act, Act of March 3, 1931, ch. 411, Stat. 1494 (emphasis added). *See Russello v. United States*, 464 U.S. at 23-24 ("Where Congress includes limiting language in an earlier version of a bill but deletes it prior to enactment, it may be presumed that the limitation was not intended").

Moreover, the context in which the phrase "site of the work" appears in Section 2 of the Act, 40 U.S.C. §276a-1, supports a broad interpretation of the phrase. Section 2 requires contracts to contain a provision permitting termination when a contractor or subcontractor has failed to pay prevailing wages to "any laborer or mechanic employed ... directly on the site of the work covered by the contract." The modifying words "work covered by the contract" show that the phrase "directly upon the site of the work" should be read as covering the physical location where any kind of work in furtherance of the contract is performed. In light of the fact that the phrase "directly upon the site of the work" has a broad meaning in 40 U.S.C. §276a-1, there is a presumption that it should have a broad meaning in 40 U.S.C. §276a. There is a presumption that the words used twice in the same act have the same meaning. *In the Matter of Carmichael*, 100 F.3d 375 (5th Cir. 1996); *ICC Industries, Inc. v. United States*, 812 F.2d 694 (Fed.Cir. 1987), citing 2A *Sutherland Statutory Construction* 46.06.

Finally, the legislative reports accompanying the 1935 amendments, which added the current "site of the work" language, described the Act in broad terms, stating that the bill would

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require payment of prevailing wages for "laborers and mechanics employed in the performance of contracts for the construction of Federal buildings", and that the Act would be amended "[t]o provide that laborers and mechanics on all Federal construction in excess of $2,000, ... are guaranteed payment of local prevailing wages". See H.R. Rep. No. 1756, 74th Cong., 1st Sess. 1-2 (1935); S. Rep.No. 1155, 74th Cong., 1st Sess. 1-2 (1935).

The legislative history further demonstrates that any intended limitation on coverage was based on a desire to avoid compelling the payment of prevailing wages in any industry other than the construction. To avoid regulating wages in "private industry", Congress wanted to ensure that where workers manufactured or fabricated products "used anywhere" (*i.e.*, products manufactured or fabricated at previously established commercial sites or non-dedicated facilities), the workers were not covered by the Act. The following colloquy illustrates that concern (*House Debate*, at 12366 (June 8, 1932)):

Mr. LaGuardia. As the gentleman knows, under the present engineering methods a great deal of the building is really constructed in the steel mill and it is assembled on the spot.

Mr. Connery. Yes.

Mr. LaGuardia. As I read this bill, it is not sufficiently broad to reach out and compel the prevailing rate of wages in the particular material built for that building.

Mr. Connery. I see what the gentleman is after; and while I heartily sympathize with his views on that, if we started in to take materials in connection with this, we would cover many, many industries in the United States, including the United States Steel Corporation, and we would be telling them what wages they would have to pay in that industry. We thought that was too big a field to cover at this time.

Mr. LaGuardia. There is a difference between material like brick and cement which may be used anywhere and the steel structure that is made for that building and that building alone.

Mr. Connery. Yes; but it would affect the bricks and everything else that is manufactured, and the Government would be regulating the wages of private industry. The committee thought that was a little too far to go at this time.

Consistent with the intent of Congress as expressed in the above-quoted legislative history, the Wage Appeals Board has effectively enforced the functional component of the site of work test to ensure that covered work is exclusively dedicated, or nearly so. *See, e.g.*, *CAT Construction, Inc.*, WAB Case No. 91-26 (February 24, 1993)("99% of the material excavated"

from a pond excavation site one-quarter mile away from the highway under construction "was used on the highway construction project"); *Ontario Pipeline, Inc.*, WAB Case Nos 81-12 and 81-13 (January 28, 1985)(99% of precast manholes was used on the project).

In sum, the common usage of the word "work"; the presence of the words "public buildings or public works" in the same section of the Act, 40 U.S.C. §276a; the omission of the work "public" from the 1935 Act even though it was in the 1931 Act; the usage of "directly upon the site of the work" in 40 U.S.C. §276a-1; and the legislative history all demonstrate that "directly upon the site of the work" means all sites where work in furtherance of the contract occurs. The DOL can effectuate Congressional intent by applying the functional test set forth in current DOL regulations 5.2(l)(2) and 5.2(l)(3). In applying the functional test, the DOL ensures that there is no regulation of private industry wages. The geographic test in 5.2(l)(2) is a restriction in coverage that thwarts the purpose of the Act.

III. THE IUOE SUPPORTS THE COUNCILS' IMPLICIT ADOPTION OF DOL's DECISION TO EXCLUDE A DEFINITION OF "ADJACENT OR VIRTUALLY ADJACENT"

In revising its current regulation, the DOL considered the arguments of contracting agencies and other commenters urging it to define the terminology "adjacent or virtually adjacent". The DOL opined that "establishing a maximum distance would be ill-advised because it would create an arbitrary, artificial benchmark for determining Davis-Bacon coverage that ignores the differing nature of various construction processes." 65 *Fed. Reg.* at 80272. The DOL recognized that the setting of a maximum distance would "enable contractors to locate dedicated support facilities immediately beyond any such boundary for the purpose of avoiding Davis-Bacon coverage, thereby defeating the purposes of the Act." *Id.* The IUOE supports the Councils' implicit adoption of the DOL's decision to exclude a definition of "adjacent or virtually adjacent" from 48 C.F.R. §52.222-6(a)(iii).

Since the actual distances may vary depending upon the size and nature of the project (65 *Fed. Reg.* at 57273),[6] the Wage and Hour Division must have the latitude to reach results that make sense given the parameters of the particular project under construction. Just as the DOL did not contemplate projects like Braddock dam when it limited site of the work to the "place or places where the construction called for in the contract will remain when work on it has been complete" in its former regulation (29 C.F.R. §5.2(l)(1)), a strict limitation in a definition of "adjacent or virtually adjacent" has the potential to create results contrary to the intent of the Act.

In declining to specify a maximum definition in the final rule, the DOL stated that it is not uncommon or atypical for construction work related to a project to be performed outside the

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[6] See e.g., the district court's opinion in *L.P. Cavett Co. v. U.S. Department of Labor*, 892 F. Supp. 973, 979 (S.D. Ohio 1995), *rev'd* 101 F. 3d 1111 (6th Cir. 1996):

> In the case of the construction of a highway, however, which by its nature is long and narrow and requires large amounts of construction materials, the site of the construction must, by necessity, spill over onto nearby areas, although these areas are outside the land occupied by the final construction work.

boundaries defined by the structure that remains upon completion of the work. 65 *Fed. Reg.* at 80272. The DOL cited as an example construction cranes that are typically positioned outside the permanent site of the construction because it would not be possible to place the crane where the building is to stand. *Id.* Another common example noted by the DOL was work at a temporary batch plant constructed for the exclusive purpose of supplying asphalt for the construction of a highway project. *Id.* As stated by the DOL, it would appear unlikely for practical reasons that the contractor would install the batch plant directly on the site of the highway because it would stand in the way of the paving process. *Id.* Rather, the batch plant would more likely be located somewhere off to the side of the highway, *i.e*, nearby, but not directly on the site where the highway will remain upon completion. *Id.*

The WAB, and more recently the ARB, have recognized in applying the "site of the work" test that, in usual case, there is no feasible place to locate an ancillary site any closer to a site in proposed regulation 5.2(l)(1) (where the public work will remain or where a significant portion of a public work is constructed). *See, e.g.*, *Bechtel Constructors Corp.*, ARB Case No. 97-149 (March 25, 1998). ("The most feasible location - for the convenience of the contractor - would be as close as possible to the actual site of the work".); *Bechtel Constructors Corp.*, ARB Case No. 95-045A (July 15, 1996)("The only feasible way to meet the needs of the aqueduct construction was to have the concrete prepared at a convenient site and transported to the precise area of need".); *United Construction Co.*, WAB Case No. 82-10 (January 14, 1983) ("Considering the physical layout of the Truman project ... with the reservoir covering parts of seven counties in western Missouri and with a recreation area of over 3,000 square miles, the Board does not have difficulty finding that the various distances (ranging from 1.8 miles to 55 miles) between the batch plant and the locations of the individual construction sites constitute a single site of work for Davis-Bacon Act coverage purposes on this project"). A denial of coverage based on the fact that, given the exigencies of the project, it was not feasible to place an ancillary site closer to the project, would be contrary to the purposes of the Act.

IV. CONTRACTORS SHOULD BE REIMBURSED FOR INCREASED LABOR COSTS WHEN THE WAGE DETERMINATIONS AT AN ACTUAL SECONDARY SITE ARE HIGHER THAN THE WAGE DETERMINATIONS AT AN INTENDED SECONDARY SITE

Under the proposed rule, "[a]ny wage determination subsequently incorporated for a secondary site of the work shall be effective from the first day on which work under the contract was performed at that site and shall be incorporated without any adjustment in contract price or estimated cost." 48 C.F.R. §52.222-6(b)(1). According to the Councils, this is "based on the premise that secondary sites are initiatives of the offeror that can be instituted before or after contract award."

The IUOE disagrees with the Councils' determination that contractors should bear the burden of paying higher wages without reimbursement from the contracting agency in circumstances where it may be technologically or economically infeasible to construct a significant portion of a public work at an intended secondary site and the wage determination at the actual secondary site is higher. The shifting of the financial burden to the contractor

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(regardless of whether the contractor is union or non-union) undercuts the goal of the Davis-Bacon Act (*i.e.*, to ensure that workers are paid the prevailing wages and benefits) and is inconsistent with what the DOL envisioned when it recognized that multiples site of work may exist for a project.

While it has long been recognized that the burden is on a contractor to "make an investigation of labor costs before submitting its bid" (*United States v. Binghampton Const. Co.*, 347 U.S. 171, 178 (1954)), such recognition was premised upon the assumption that the locality of the site of the work was known to the bidder at the time it submitted its bid. Congress sought to accomplish the goal of protecting construction workers from substandard earnings by "directing the Secretary of Labor to determine, on the basis of prevailing rates in the locality, the appropriate wages for each project." 347 U.S. at 177. Since a number of wage determinations may be appropriate for a project, a contractor should not be responsible for investigating wage determinations at a location that may change for reasons unforeseen at the time the contractor bid on the project.

As stated above, placing the financial burden on the contractor in circumstances where it is technologically or economically infeasible to construct significant portions of public works at an intended secondary site is contrary to what the DOL envisioned when it recognized that more than one site of the work may exist. In the preamble to the final rule, the DOL stated that it "recognizes that contracting agencies will need a mechanism to ascertain in advance the locations where potential bidders would build the project so that wage determinations may be obtained for each location." 65 *Fed. Reg.* at 80275. The DOL stated that it believed that "these mechanisms are best developed through the agencies' procurement regulations." *Id.* The DOL further stated that in "most instances where a significant portion of a major project is to be constructed at a secondary site, the possible locations of the construction sites would be limited as a practical matter, and therefore, would not be onerous for the contracting agency to include a wage determination covering the possible construction location when soliciting bids for the project." *Id.*

CONCLUSION

In conclusion, the IUOE fully supports the Councils' adoption of the DOL's revised site of the work regulation recognizing that multiple sites of work may exist for a single project.

With regard to the Councils' adoption of current regulation 29 C.F.R. §5.2(l)(2), the IUOE recommends that the Council eliminate the requirement that construction "activity related to construction" at ancillary sites be "adjacent or virtually adjacent" to a 5.2(l)(1) site of the work. That requirement is inconsistent with the language of the Davis-Bacon Act, which provides coverage at all sites where work in furtherance of the project under construction is performed.

Additionally, if the DOL includes the "adjacent or virtually adjacent" language in 5.2(l)(2), the IUOE agrees that the Councils should not define "adjacent or virtually adjacent".

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Finally, the IUOE submits that contractors should be reimbursed for increased labor costs when the wage determinations at an actual secondary site are higher than the wage determinations at an intended secondary site.

Respectfully submitted,

Frank Hanley
General President

2002-004-65

Laborers' International Union of North America

February 23, 2004

Headquarters:
905 16th Street, NW
Washington, DC
20006-1765
Phone: (202) 737-8320
Fax: (202) 737-2754

VIA HAND-DELIVERY AND U.S. MAIL

Ms. Laurie Duarte
General Services Administration
FAR Secretariat (MVA)
1800 F. Street, N.W.
Room 4035
Washington, DC 20405

Re: FAR CASE 2002-004 – Comments Concerning Proposed Rule (68 Federal Register 74404) (December 23, 2003)

Dear Ms. Duarte:

Enclosed are the comments of the Laborers' International Union of North America, AFL-CIO, in response to the above-referenced Notice published in the Federal Register on December 23, 2003, by the Department of Defense, General Services Administration and NASA.

We are requesting your consideration of the above-referenced comments when revising the Federal Acquisition Regulations relating to the Davis-Bacon Act.

Your time and attention to this matter are greatly appreciated. If you should have any questions regarding this issue, please contact this office.

With kind regards, I remain

Sincerely yours,

Terence M. O'Sullivan

TERENCE M. O'SULLIVAN
General President

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opeiu2liuna
Enclosure

100th ANNIVERSARY
A CENTURY OF PRIDE AND STRENGTH

Rec'd 2/23/04 MVA

2002-004-65

COMMENTS OF THE LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO, ON PROPOSED REVISIONS TO THE FEDERAL ACQUISITION REGULATIONS RELATING TO THE DAVIS-BACON AND RELATED ACTS APPLICABLE TO LABOR STANDARDS PROVISIONS OF CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (FAR CASE 2002-004)

FEBRUARY 23, 2004

I. INTRODUCTION

The Laborers' International Union of North America, AFL-CIO, (LIUNA) represents hundreds of thousands of members nationwide, many of whom are employed on federally-financed and assisted construction projects affected by these proposed regulations. LIUNA submits these comments on the revisions proposed by the Department of Defense, General Services Administration and National Aeronautics and Space Administration to several of the Federal Acquisition Regulations rules concerning the Davis-Bacon prevailing wage requirements that apply to federally and federally-assisted construction projects. 68 Federal Register 74404 (December 23, 2003) (hereinafter "NPR"). LIUNA is submitting comments which support in part, and oppose in part, the revisions regarding the payment of prevailing wages and fringe benefits to workers employed on "secondary sites"of work"[1]

II. BACKGROUND

In December 2000, the Department of Labor (DOL) revised two of its regulations, including 29 C.F.R. 5.2(l) and 5.2(j), which prior to that time had contained a three-part definition of "site of the work". The pre-December 2000 regulation provided, first, that "the site of the work" is "the physical place or places where the construction called for in the contract will remain when work on it has been completed and, as discussed in paragraph (l)(2) of this section, other adjacent or nearby property used by the contractor or subcontractor in such construction which can reasonably be said to be included in the site"; second, that "fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc." are part of the site of the work provided they meet two tests including they are "so located in proximity to the actual construction location that it would be reasonable to include them" and that they be "dedicated exclusively, or nearly so, to performance of the contract or project"; and, third, that fabrication

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[1]The Davis-Bacon Act ("DBA" or "Act") requires that "the advertised specifications for contracts for construction, alteration, and/or repair, including painting and decorating, of public buildings or public works . . . shall contain a provision stating the minimum wages to be paid to various classes of laborers and mechanics . . . and every contract based upon these specifications shall contain a stipulation that the contractor or his subcontractor shall pay all mechanics and laborers employed directly upon the site of work" . . . 40 U.S.C. § 276a.

plants, batch plants, borrow pits, tool yards, job headquarters, etc. "of a commercial supplier or materialman which are established by a supplier of materials for the project before the opening of bids and not on the project site, are not included in the site of the work."

The Department of Labor proposed and then issued in final form in December 2000 revisions to the foregoing regulations. The final regulations were intended to "clarify" the regulations in light of three appellate court decisions and were also revised to reflect new construction technologies that make it practical and advantageous to build "major segments" of complex buildings and works on more than one physical locations.

III. LIUNA SUPPORTS THE PROPOSED RULE TO THE EXTENT IT INCORPORATES INTO THE FAR'S DOL'S DECEMBER 2000 RULE INCLUDING SECONDARY SITES IN THE SITE-OF-WORK DEFINITION

LIUNA supports the proposed rule herein to the extent it includes in the FAR the definition of the "site of the work" to include other locations than the project's final resting place, which are established specifically for the performance of the Davis-Bacon covered contract and at which a significant portion of the public building or work called for by the contract is constructed.[2]

LIUNA does so because the previous "site of the work" definition did not adequately address the reality of the modern construction industry, which would warrant coverage of locations other than where the building or work will remain. New construction technologies have been developed that allow contractors to build major segments of complex public works and buildings at locations some distance from the locations where the permanent structures will remain when their construction is completed. For example, innovative construction technology involving lock and dam projects, including underwater concrete construction, allow whole sections of structures to be constructed up-river and floated down-river to be put in place to form the structure being built. In such situations, much of the construction of the public work or building is performed at a secondary site other than where the project will remain after construction is completed.

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[2]LIUNA also urged DOL, and also urges herein, that both the DOL regulations and FAR regulations should include in the site of work definition locations such as temporary batch plants, fabrication facilities, borrow pits and tool yards used for activities directly related to the covered construction project, where such locations are dedicated exclusively (or nearly so) to the performance of a covered project or contract, without regard to whether they are adjacent or virtually adjacent to the location of the project site. LIUNA attaches hereto and incorporates herein its comments, and the grounds and reasons therein, which it submitted to DOL on October 23, 2000 concerning the proposed rule announced in 65 Federal Register 57270 (September 21, 2000).

LIUNA believes that the proposed FAR rule, like the December 2000 DOL rule, which recognizes "secondary sites" established specifically for the purpose of constructing a significant portion of a "public building or public work" be considered construction performed directly upon the site of the public building or public work is consistent with both the language and intent of the Davis-Bacon Act. The court decisions referred to in DOL's explanation of its final December 2000 rule involve material supply locations and the transportation between such locations and the construction site of the project, and do not preclude Davis-Bacon coverage where significant portions of projects are actually being constructed at secondary locations.

The current body of technical and professional literature makes absolutely clear that the site of work definition as modified in December 2000 by DOL comports with the reality of modern-day construction techniques. For example, the integration of modular fabrication, computer-aided design (CAD) databases and shop robotics is increasing the ability of modern construction to occur at a variety of locations other than the ultimate resting place of the building or work. *See The NIST Robocrane*, Albus, J., Journal of Robotics Systems (Vol. 10, 709 (1992); Crane, C. *Navigation of an Autonomous Vehicle*, Proceedings on 5th Topical Meeting on Robotics and Remote Systems (1992); Kangari, R., *Potential Robotics Utilization in Construction*, Journal of Construction Engineering and Management, Vol. 115, p. 126 (1989); Ravani, B., *Requirement for Applications of Robotics and Automation in Maintenance and Construction Tasks*," Proceedings, ASCE Speciality Conference on Robotics, p. 427 (1994).[3]

Another example comes from the Civil Engineering Research Foundation ("CERF"), which is an organization affiliated with the American Society of Civil Engineers having the mission of bringing together diverse groups within the civil engineering community to facilitate, integrate and coordinate research in civil engineering and to expedite the transfer of innovative research into practice. *In Creating the 21st Century through Innovation: Engineering and Construction for Sustainable Development* (CERF Report #96-5016.E) (1996), CERF identifies one of the primary areas of innovation for the modern construction industry to be standardizing the production of materials to drastically reduce so-called "on-site" construction time. System innovations appear with a relatively high degree of frequency in the construction industry, since systems are reconfigured for each project, which provides an opportunity to incorporate a set of innovations that can complement each other to achieve new functions or levels of performance. Construction innovation making significant work at multiple sites possible can and is arising

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[3]LIUNA also urged DOL that this same justification for including locations where significant portions are constructed in the "site-of-work" also justifies - and indeed, if the intent of the Davis-Bacon Act is to be carried out - requires that locations for activities such as temporary batch plants, fabrication facilities, borrow pits, and tool yards that are directly related to the covered project and are dedicated exclusively (or nearly so) to supporting the project must be included in the definition of the site-of-work. LIUNA urged DOL in 2000 to cover these facilities, as well, in its final rule. LIUNA, therefore, does not support that portion of this proposed rule to the extent it excludes such sites from Davis-Bacon coverage.

from all the organizations in construction, including suppliers, manufacturers, contractors, owners and workers.

A continuing example of the need for this proposed FAR rule to include significant secondary sites in the definition of "site-of-work" is the Olmsted Lock and Dam where the Corps of Engineers issued specifications for construction of a new gated dam on the Ohio River. Because of the specifications, there originally was the possibility that significant portions of the work would not be performed at the location of Olmsted Dam and would not be covered by the Davis-Bacon Act because the Corps of Engineers did consider such a location as part of the "site of the work" covered by the Act at that time.

The dam and gate piers primarily consist of floating structures to be constructed at a secondary site. Without the floating structures, the public work contemplated in the contract could not exist. Under the December 2000 final rule, the site-of-the-work definition would encompass the construction of the massive floating structures that are part of the new gated dam at both the Braddock Locks and Dam on the Monogahala River in Allegheny County, Pennsylvania[4] as well as Olmsted Dam on the Ohio River. Construction of these floating structures clearly comprise significant portions of the "public work" within the meaning of that term in the Davis-Bacon Act and, therefore, properly should be included in the "site of work" under the Davis-Bacon Act and, likewise, reflected in the FAR.

These two projects typify many of the new construction technologies at secondary sites which are significant portions of the "public work" within the meaning of that term in the Davis-Bacon Act and, therefore, should be included in the "site of work".

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[4]The Contract Solicitation at Braddock Dam states that some of the floating structures "will be approximately 333 feet long by 106 feet wide by 40 feet high and the other one will be approximately 265 feet long by 106 feet wide by 22 feet high." See 52.77-4050 III Davis-Bacon Act: "Site of the Work"

> For the purposes of FAR clause 52.222-6, Davis-Bacon Act, the "site of the work" is defined as the limits of the contractor's work area at the Braddock Locks and Dam, the Left Bank Work Area, the RIDC disposal area, the Duquesne Offloading Facility and Outfitting Pier, and the Right Bank Work Area downstream of 11th Street. For the purposes of this clause, the contractor-furnished fabrication and assembly site for the float-in concrete segments is not considered to be a part of the "site of the work."

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III. LIUNA OPPOSES THE PROPOSED RULE TO THE EXTENT IT DOES NOT REQUIRE REIMBURSEMENT OF CONTRACTOR COSTS FOR DAVIS-BACON WAGES AND FRINGE BENEFITS PAID TO LABORERS AND MECHANICS ON THE SECONDARY SITE

LIUNA supports the portion of the proposed rule making the wage determination on the secondary site retroactive to the time when the work begins on the secondary site. However, LIUNA strongly opposes the language in the proposed rule in § 52.222-6(b)(1) which requires that the wage determination for the secondary site "shall . . . [be] incorporate[d] without any adjustment in contract price or estimated costs" when it is issued after contract award and/or work has begun. This seriously penalizes contractors who are responding to the needs of the government in the construction of a project which requires a secondary site.

The proposed rule is premised upon the assumption that contractors are making decisions about establishing significant secondary sites on their sole initiative and without regard to the necessities of meeting the specifications of the contract as set forth by the contracting agency, including inherent geographical limitations of the site. If the secondary site is appropriately covered by the Davis-Bacon Act as DOL's December 2000 final rule makes clear it should be, not only should the laborers and mechanics receive the appropriate Davis-Bacon wage and fringe benefits, but the contractor should also be reimbursed for its labor costs. The fact of Davis-Bacon coverage should not be used as a vehicle to harm contractors complying with the statute or saving the agency costs at the contractor's expense.

Braddock Dam is a case in point. The Corps of Engineers originally asserted that the construction of the two massive hollow floating structures, which will comprise the vast bulk of the new gated dam, is "off-site fabrication and assembly" work. The Corps of Engineers took the position that "Davis-Bacon Act provisions would not apply to the contractor-furnished fabrication facility for the subject project." The bid solicitation (Section 00800, Clause 22) purported to define "the 'site of the work' for purposes of Davis-Bacon as three clearly demarcated work areas, a disposal area, an offloading facility, and an outfitting pier. Excluded were location(s) where construction of the float-in segments of the dam would be performed. Regardless of whether the contractor establishes the secondary site before or after award or work begins, the contractor is doing so at the agency's behest and should be fully reimbursed for the Davis-Bacon wages and fringe benefits paid on the secondary site.

Additionally, LIUNA urges that contracting agencies must guard against manipulation of contracts, or creating situations which would encourage manipulation by contractors to transfer significant portions of the work to a secondary site in a locality with lower wages and fringe benefits than in the primary site. This result also defeats the intent of the Davis-Bacon Act.

IV. CONCLUSION

In conclusion, LIUNA supports the proposed FAR amendment of the definition of the "site of the work" to cover secondary locations where significant segments are constructed. However, LIUNA opposes the proposed revision to the extent it, like the final December 2000 DOL rule, fails to define site-of-work not only to include work performed at locations established specifically for the purpose of constructing a significant portion of a public building or public work, but also to locations that are dedicated exclusively, or nearly so to performance of a contract or project covered by the Davis-Bacon and Related Acts without regard to the geographic proximity to other "sites of the work." LIUNA believes a definition of the "site of the work" must include not only locations established specifically for the purpose of constructing a significant portion of a public building or public work, but also to include locations used for activities such as temporary batch plants, fabrication facilities, borrow pits and tool yards that are directly related to the covered construction project, provided those locations are dedicated exclusively or nearly so to supporting that project.

Finally, LIUNA supports payment of wages and fringe benefits issued under the Davis-Bacon Act for secondary sites retroactive to the point at which work begins but strongly opposes allowing a contracting agency under any circumstances from prohibiting a contractor from receiving reimbursement for wages and fringe benefits paid to laborers and mechanics working upon that secondary site.

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA

October 23, 2000 004-65

ATTACHMENT TO THE COMMENTS OF
THE LABORERS' INTERNATIONAL UNION
FAR CASE 2002 - 004

VIA FACSIMILE (202) 693-1432 AND U.S. MAIL

Mr. T. Michael Kerr
Administrator
Wage & Hour Division
Employment Standards Administration
Attn: Government Contracts Team
U.S. Department of Labor
Room S-3018
2000 Constitution Avenue, NW
Washington, D.C. 20210

Re: Comments Concerning Proposed Rule
(65 Federal Register 57270) (September 21, 2000)
on Davis-Bacon and Related Acts Regulations

Dear Mr. Kerr:

Enclosed are the comments of the Laborers' International Union of North America, AFL-CIO, in response to the above-referenced Notice, published in the Federal Register on September 21, 2000, by the Employment Standards Administration, U.S. Department of Labor, requesting comments concerning proposed rules revising the regulations of the Davis-Bacon and Related Acts.

Very truly yours,

Terence M. O'Sullivan

TERENCE M. O'SULLIVAN
General President

Enclosure

HEADQUARTERS:
905-16th Street, NW
Washington, D.C.
20006-1765
(202) 737-8320
Fax: (202) 737-2754

00465

COMMENTS OF THE LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO, ON PROPOSED REGULATIONS ISSUED UNDER THE DAVIS-BACON AND RELATED ACTS APPLICABLE TO LABOR STANDARDS PROVISIONS OF CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION

OCTOBER 23, 2000

I. INTRODUCTION

The Laborers' International Union of North America, AFL-CIO, (LIUNA) represents over 700,000 members nationwide, many of whom are employed on federally-financed and assisted construction projects affected by these proposed regulations. LIUNA submits these comments on the Department of Labor's (DOL) proposal to amend two definitions in the regulations which set forth rules for administration and enforcement of the Davis-Bacon prevailing wage requirements that apply to federally financed and federally-assisted construction projects. 65 Federal Register 57270 (September 21, 2000) (hereinafter "NPR"). The revisions concern regulatory requirements regarding the language of the Davis-Bacon Act which requires the payment of prevailing wages to workers employed "directly upon the site of work"[1]

II. BACKGROUND

The Department proposes to revise two of its regulations, including 29 C.F.R. 5.2(l) and 5.2(j). In § 5.2(l), the Department currently provides a three-part definition of "site of the work." The first part provides that "the site of the work" is "the physical place or places where the construction called for in the contract will remain when work on it has been completed and, as discussed in paragraph (l)(2) of this section, other adjacent or nearby property used by the contractor or subcontractor in such construction which can reasonably be said to be included in the site." 29 C.F.R. 5.2(l)(1).

The second part provides that "fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc." are part of the site of the work provided they meet two tests (1) they are "so located in proximity to the actual construction location that it would be reasonable to include them," and (2) that they be "dedicated exclusively, or nearly so, to performance of the contract or project." 29 C.F.R. 5.2(l)(2)

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[1] The Davis-Bacon Act ("DBA" or "Act") requires that "the advertised specifications for contracts for construction, alteration, and/or repair, including painting and decorating, of public buildings or public works . . . shall contain a provision stating the minimum wages to be paid to various classes of laborers and mechanics . . . and every contract based upon these specifications shall contain a stipulation that the contractor or his subcontractor shall pay all mechanics and laborers employed directly upon the site of work" . . . 40 U.S.C. § 276a.

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The third part states that fabrication plants, batch plants, borrow pits, tool yards, job headquarters, etc. "of a commercial supplier or materialman which are established by a supplier of materials for the project before the opening of bids and not on the project site, are not included in the site of the work." 29 C.F.R. 5.2(l)(3)

In § 5.2(j), the Department provides the regulatory definition of the statutory terms "construction, prosecution completion, or repair." Section 5.2(j)(1) refers to "work done on a particular building or work at the site" and defines the foregoing statutory terms as including:

> [a]ll types of work done on a particular building or work at the site thereof, including work at a facility which is dedicated to and deemed a part of the site of the work within the meaning of § 5.2(l)—including without limitation (i) [a]lteration , remodeling, installation (where appropriate) on the site of work of items fabricated off-site; (ii) [p]ainting and decorating; (iii) [m]anufacturing or furnishing of materials, articles, supplies or equipment on the site of the building or work; and (iv) [t]ransportation between the actual construction location and a facility which is dedicated to such construction and deemed a part of the site of the work within the meaning of § 5.2(l).

The Department proposes to revise the foregoing regulations in several important respects, including "to clarify" the regulations in light of three appellate court decisions and to reflect new construction technologies that make it "practical and advantageous" to build "major segments" of complex buildings and works as follows: (1) § 5.2(l)(1) would provide that the site of work includes "any other site [than where the building or work will remain] where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the contract or project...." NPR at 57273; (2) job headquarters, tool yards, batch plants, borrow pits are part of the site of the work provided they are dedicated exclusively, or nearly so, to the performance of the contract or project and are adjacent or virtually adjacent to the site of the work; (3) include in § 5.2(j)(1)(iv)(A) transportation between the site of work and a facility which is dedicated to the construction of the building or work and deemed part of the site of work within the meaning of § 5.2.(l)(2);[2] (4) proposed § .2(j)(1)(iv)(B) would include that transportation of portion(s) of the building or work between a site where a significant portion of such building or work is constructed (which is a part of the site of work) and the physical place(s) where the building or work will remain; (5) proposed § .2(j)(2) would provide that transportation of materials or supplies to or from the site of work by employees of the construction contractor or subcontractor is not construction within the meaning of the Act; (6) proposed § .2(l)(3) would provide that fabrication plants,

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[2] Proposed § 5.2(l)(2) would provide job headquarters, tool yards, batch plants, borrow pits, etc., are part of the site of work where exclusively (or nearly so) dedicated to the performance of the project and adjacent or virtually adjacent to the site of work. NPR at 57275.

batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial or material supplier dedicated exclusively (or nearly so) to the performance of the contract are not part of the site of the work if they were established before bid opening and they are not on the site of the work as provided in § 5.2(l)(1). NPR at 57275.

The NPR refers to the need to "clarify" the Department's proposed regulation of the site of the work definition in light of three court decisions in which the issue of the scope of the site of work arose. In *Building and Construction Trades Department, AFL-CIO v. United States Department of Labor Wage Appeals Board*, 932 F.2d 985 (D.C. Cir. 1991), the court expressly declined to rule on the regulation defining the site of the work at 29 C.F.R. 5.2(l). 932 F.2d at 989 n.6, 991 n.12. However, it expressed the view that Congress intended to limit Davis-Bacon coverage to "employees working directly on the physical site of the public building or public work under construction," 932 F.2d at 990 n.9, 991. In *Ball, Ball, and Brosamer v. Reich*, 24 F 3d 1447 (D.C. Cir. 1994) and *L.P. Cavett Company v. U.S. Department of Labor*, 101 F.3d 1111 (6th Cir. 1996), the courts focused on the geographic scope of the statutory phrase "site of the work" in relation to borrow pits and batch plants established specifically to serve the needs of covered construction projects. In *Ball*, the court indicated that the regulations at section 5.2(l)(2) meet the Davis-Bacon Act if the regulatory phrase in section 5.2(l)(2) "so located in proximity to the actual construction location that it would be reasonable to include them" were applied "only to cover batch plants and gravel pits located in actual or virtual adjacency to the construction site." 24 F.3d at 1452. In *Cavett*, the Sixth Circuit held that truck drivers hauling asphalt from a temporary batch plant to the highway under construction three miles away were not covered by the Act. 101 F.3d at 1115. The Sixth Circuit concluded that the statutory language means that "only employees working directly on the physical site of the work of the public work under construction have to be paid prevailing wage rates."

For the reasons set forth below, LIUNA supports issuance of a final rule to include within the "site of the work" other locations than the project's final resting place, which have been established specifically for the performance of the Davis-Bacon covered contract and at which a significant portion of the public building or work called for by the contract is constructed. LIUNA also urges DOL to include in its final rule locations such as temporary batch plants, fabrication facilities, borrow pits and tool yards used for activities directly related to the covered construction project, where such locations are dedicated exclusively (or nearly so) to the performance of a covered project or contract.

III. THE FINAL RULE SHOULD INCLUDE COVERAGE OF LOCATIONS WHERE SIGNIFICANT PORTIONS OF THE PUBLIC BUILDING OR PUBLIC WORK ARE CONSTRUCTED IN ADDITION TO THE LOCATION WHERE THE BUILDING OR WORK WILL REMAIN

The current "site of the work" definition in § 5.2(l) does not adequately address the reality of the modern construction industry, which would warrant coverage of locations other than where the building or work will remain. New construction technologies have been developed that allow

contractors to build major segments of complex public works and buildings at locations some distance from the locations where the permanent structures will remain when their construction is completed. For example, as will be discussed in greater detail below, innovative construction technology involving lock and dam projects, including underwater concrete construction, allow whole sections of structures to be constructed up-river and floated down-river to be put in place to form the structure being built. *See* Attachment 1. In such situations, much of the construction of the public work or building is performed at a secondary site other than where the project will remain after construction is completed.

Because modern construction innovations allow certain projects to be built almost in their entirety at one location and then moved to the ultimate resting place as we will show below, it is consistent with both the language and intent of the Davis-Bacon Act that a location established specifically for the purpose of constructing a significant portion of a "public building or public work" be considered construction performed directly upon the site of the public building or public work within the meaning of the Davis-Bacon Act. The court decisions referred to above involve material supply locations and the transportation between such locations and the construction site of the project, and do not preclude Davis-Bacon coverage where significant portions of projects are actually being constructed at secondary locations.

A. Innovative Construction Techniques Have Been Developed and Are in Use Which Allow Significant Portions of Public Buildings and Works To Be Constructed at Locations Other than the Final Resting Place of the Building or Work

DOL's justification for the portion of the new rule which will include locations in the "site-of-work" definition where significant portions of the project are constructed is that new construction technologies make it possible to build major segments of public buildings and works at a distance from where the project will remain. NPR at 57273. This conclusion is amply and clearly supported by projects currently being constructed; projects in the planning stage and the body of technical and professional literature available to describe these new technologies, as we show below and in our attachments to these Comments.

Moreover, as we also show, the availability and use of innovative construction technologies establishes that the modern-day construction industry is well beyond that which most observers could imagine a few years ago, much less in 1935. The innovative construction technologies described herein establish that the breadth and amount of so-called "off-site" work which occurs as an integral part of the construction of the building or work has grown exponentially in recent years due to a variety of developments, not the least of which is the application of information technology to construction processes.

Therefore, LIUNA supports the position of the Building and Construction Trades Department, AFL-CIO, that the same justification for including locations where significant portions of a project are constructed in the "site-of-work" also supports – and indeed, if the intent

of the Davis-Bacon Act is to be carried out – requires that locations for activities such as temporary batch plants, fabrication facilities, borrow pits, and tool yards that are directly related to the covered project and are dedicated exclusively (or nearly so) to supporting the project must be included in the definition of the site-of-work. We urge DOL to cover these facilities, as well, in the final rule.

The technologies which allow significant segments of a project to be constructed at a location other than where the project remain as well as allow major portions of the project to be constructed at so-called "off-site" facilities occurs on a variety of projects, including but not limited to dams, bridges, inland waterways, wharves and piers, ocean structures, buildings and deep foundations, pipelines, outfall and intake structures, and tunnels. Included in Attachment 1 are detailed descriptions of these innovative technologies and how they allow construction to occur at several locations and in so-called "off-site" facilities on a variety of types of projects.

For example, innovative lift-in precast concrete pilecaps can be joined underwater using tremie concrete, which eliminates the installation of on-site cofferdams. Attachment 1. Other modern technologies on bridge construction allow the fabrication and use of floating cofferdams. Attachment 1. Construction of bridge foundations and substructures involve installation of precast concrete pier jackets and staged pile construction methods for installing precast concrete cap shells. Attachment 1. The innovative "in-the-wet" methods are used in construction of inland waterway projects and include the use of large precast units, floating structures and cofferdams. Indeed, technology has allowed the usage of lift-in concrete shells weighing up to 4500 tons. Attachment 1.

These and others innovative marine construction methods, marine foundation designs and construction, tremie concrete construction techniques and seismic design exist and are being used in the industry. In marine terminals, wharves and piers, large diameter concrete cylinder piles, composite piers and pile supported platforms are in use. Attachment 1. Current technology allows the contractor to support launching beams on existing piles for precast deck segments. Attachment 1. Ocean structures no longer must be based upon concrete gravity based structures, but now include foundations for steel jacket platforms, floating exploration and production platforms and floating production storage and off- loading structures. Attachment 1. Innovative construction technologies and equipment exist for the casting, launching and installation of pipelines, outfall and intake structures in marine environments, including use of silt containment systems. Attachment 1. Advanced concrete technologies are used on a wide variety of projects, including "in-the-wet" construction, such as are being used at Braddock and Olmsted Dams described below, utilizing so called "off-site" fabrication of large precast concrete shells; use of large diameter steel-encased concrete cylinder piles for under-water bridges, wharves and piers; and application of concrete technologies to deteriorated concrete structures. Attachment 1.

The current body of technical and professional literature makes absolutely clear that the site of work definition must be modified so that it comports with the reality of modern-day

construction techniques.[3] As the attachments herein show, constructed facilities are complex systems, which are characterized by the integration of a changing set of components and systems that must interact to perform the overall function and meet conditions of the environmental context over time. System innovations appear with a relatively high degree of frequency in the construction industry, since systems are reconfigured for each project, which provides an opportunity to incorporate a set of innovations that can complement each other to achieve new functions or levels of performance.

Construction innovation can and is arising from all the organizations in construction, including suppliers and manufacturers of their own products, contractors and workers, management, the owners and occupants. Innovations also often appear outside the industry and are often based upon scientific or engineering research. And as the demand rises for increasingly complex facilities, most construction-related companies will look for design and technology innovations to increase the technical feasibility of the desired projects and improve the performance of the completed facility.

From this dynamic system are countless examples of recent innovations. For example, in the field of robotics, robots are being used for exterior handling of large loads such as concrete buckets, prefabricated elements, and steel bars; horizontal finishers for smoothing, troweling, etc.; with a work tool mounted on a horizontally moving carriage; vertical finishers used for painting or inspecting exterior walls with a work tool mounted on a vertically moving carriage; interior finishers for painting, masonry, etc.; material handling tasks inside the building; so-called off-site of the work activities such as concrete and asphalt mixing plants; production of standardized blocks and pipes; prefabrication of masonry walls; bricklaying machines; and control of mobile construction machinery. *Implementation of Robotics in Building: Current Status and Future Prospects*, Warszawski, A., p. 31, *Journal of Construction Engineering and Management* (Jan./Feb. 1998). Attachment 2.

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[3] For example, the Civil Engineering Research Foundation ("CERF") is an independent, non-profit organization affiliated with the American Society of Civil Engineers and has the mission of bringing together diverse groups within the civil engineering community to facilitate, integrate and coordinate research in civil engineering and to expedite the transfer of innovative research into practice. In *Creating the 21st Century through Innovation: Engineering and Construction for Sustainable Development* (CERF Report #96-5016.E) (1996), CERF sets forth a global research agenda for the engineering and construction industry and identifies as a key area of research and innovation the developing of systematic construction techniques based upon sets of units designed to be arranged or joined in a variety of ways to "[i]ncrease speed of building production . . . [and] the potential decrease in building time would be 50 percent or even 75 percent." CERF Report at 70. Thus, CERF identifies one of the primary areas of innovation for the modern construction industry to be standardizing the use of materials to drastically reduce so-called "on-site" construction time.

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Another example of advanced technology in construction involves new mapping and surveying devices using laser-radar transmission to measure the surfaces of a facility, and transforming those measurements into a three-dimensional CAD image during the mapping activity. Thus the integration of modular fabrication, computer-aided design (CAD) databases and robotics is increasing the ability of modern construction to occur at a variety of locations other than the ultimate resting place of the building or work. *See The NIST Robocrane*, Albus, J., *Journal of Robotics Systems* (Vol. 10, p. 709 (1992); *Navigation of an Autonomous Vehicle*, Crane, C., Proceedings on 5th Topical Meeting on Robotics and Remote Systems (1992); *Potential Robotics Utilization in Construction*, Kangari, R., *Journal of Construction Engineering and Management*, Vol. 115, p. 126 (1989); *Requirement for Applications of Robotics and Automation in Maintenance and Construction Tasks*," Ravani, B., Proceedings, ASCE Speciality Conference on Robotics, p. 427 (1994).

Many of these new technological systems are applied to a variety of types of buildings and works. For example, construction innovations in bridges are arising because of the availability of (1) new calculating means through computers and (2) new structural materials which permit the use of prestressed concrete bridge construction techniques involving the prefabrication of always larger and heavier elements. *Launched Bridges: Prestressed Concrete Bridges Built on the Ground and Launched Into Their Final Position*, Rosignoli, M., ASCE Press (1997). Attachment 3. In the past, the structural design of bridges was limited since analysis and dimensioning could occur using the only calculating means available before computers. But the extraordinary progress of computers, the technological advances in prestressing, and the improved knowledge of materials has rapidly extended the possibilities in design and analysis of prestressed concrete.

The application of information technology to prestressed concrete structures for bridges has permitted the adaptation of launching techniques already proven in the field of steel. Also, the commercial availability of innovative materials such as Teflon no longer require the monolithic launch of decks built on the ground near their final position because of the much higher weight of concrete and by its low tensile strength. These obstacles were gradually overcome by the advances in prestressing technology, which lightens the deck, makes it elastic and less subject to cracking, permits joining subsequent segments, and allows it to be introduced or removed according to necessity. Moreover, the commercial availability of computer programs which facilitate continuous beam analysis of the prestressed concrete in the support configurations assumed during launch permit the technological level necessary to build and to move enormous masses with due precision. Attachment 3.

There are new technologies for substituting the use of traditional plywood and lumber forms with an aluminum formwork system. The panels are connected by pins, ties, and wedges and supported by wales, props, and corner sections. Using a computer-aided design program, the supplier prefabricates all elements according to the finalized structural drawings and prepares detailed component lists and working illustrations to facilitate site assembly. Because the panels are man-movable and can be passed through planned openings to the next floor after removal

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without a crane, a faster floor cycle can be achieved. *See Fuzzy Logic for Evaluation, Alternative Construction Technology*, Li-Chung Chao, *Journal of Construction Engineering and Management*, p. 297 (July/August 1998).

Another example of technological advance allows the construction of a power plant at one site for transport to another. The power plant is built of steel plates, stiffeners and studs in one location and later filled on the resting site with concrete, therefore forming a composite structure. Much of the basic elements and modules are built in a highly mechanized facility up to the module stage. The prefabricated power plant can be composed of modules, which include the bottom slab; lateral piers; the turbine and converging cone; the diverging cone or draft tube; and the superstructures. All piping and equipment such as electrical cabinets and wiring are built in the modules and indoors with little final work on the final site. Thus, a float-in-place hydroelectric generating station, preassembled in one place and shipped to its destination is possible. *Low Head Prefabricated Power Plants*, Francois-R. Ferrer Laloe, *Indian Journal of Power & River Development*, p. 135 (Aug-Sept. 1993). Attachment 4.

As these examples show, technology allows the on-site work schedule to be shortened on a variety of types of building and works. Attachment 1. While the receiving structures involving support slabs, retaining walls, and appurtenance works are built at the project, the construction of the structure can occur and the equipment installed on an entirely separate schedule in another site. Conventional construction involves the long process of forming and pouring concrete lifts in heavily reinforced areas. Installation of the embedded parts and concrete staging is replaced by continuous placement when the prefabricated structure is set and the structures to be built on-site are limited. Excavations, foundations, retaining walls and plant appurtenances are built before the plant arrives. After the plant is set, it is concreted and final alignment of the equipment is fine tuned. Attachment 4.

Another example occurs in the highway bridge construction market which has experienced similar technological changes in designing highway bridge projects. There is an emergence of standardized cast-in-place prestressed concrete box girder bridges as the dominant design. Contractors have responded to this standardized design with continuous incremental improvements though adaption of construction process technologies such as using prefabricate stem and lost deck formwork units. *Structural Designs and Construction Technologies for California Highway Bridges*, Hampson, K., *Journal of Construction Engineering and Management*, p. 269 (Sept. 1997). Attachment 5.

Advances in composite construction techniques in which a precased concrete member acts in combination with cast in situ concrete, poured at a later time and bonded to it, now has wide usage. Composite construction allows precasting, including prefabrication of standardized sections, reuse of forms and long-line prestressing bed for continuous production. The use of precast prestressing units can largely eliminate the required scaffolding for the cast in situ concrete. On these construction sites, form work and scaffolding are reduced dramatically. The site construction time is substantially decreased when these precast elements are used.

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Prestressed Concrete — Its Application in Composite Structure, X. Xiao, p. 149, *Indian Journal of Power and River Development* (March 1997). Attachment 6.

The field of "mechantronics" has provided a new and developing technology. Mechantronics utilizes a multidisciplinary approach to technology development, involving the marriage between electronic and mechanical systems. Mechantronics is being used in the development of new construction technologies in which smart automated devices, information-based systems, and innovative construction methods have created the next generation of tools to be used on the construction sites of the future. An example of such innovative technologies is the SMART system technology developed for automating the construction of high-rise buildings. The advent of "smart building automation technology" and computer integrated construction increasingly allows the construction of significant elements of a project at several locations. *Developing and Managing Innovative Construction Technologies in Japan*, Roozbeh Kangari, p. 75, *Journal of Construction Engineering and Management* (March 1997).

This automated building construction system has combined mechanical and electronic technologies to revolutionize building construction technology that integrates high-rise construction processes, including the erection and welding of steel frames, the placement of precast concrete floor slabs and exterior and interior wall panels, and the installation of the various units. The system relies extensively on prefabricated components such as columns, beams, floorings, and walls. Assembly of these components is simplified by the use of specially designed joints, and a real-time computer control system is used for the assembly process. The system requires the synthesis of many existing technologies and is only made possible with computer information integration. Attachment 7.

B. Braddock and Olmsted Lock and Dam Projects Typify New Construction Technologies

As mentioned above, two projects which typify these new construction technologies involve the application of the Davis-Bacon Act to construction of two massive hollow floating structures that will become part of new gated dams at the Braddock Locks and Dam on the Monogahala River in Allegheny County, Pennsylvania and Olmsted Dam on the Ohio River. Construction of these massive floating structures are significant portions of the "public work" within the meaning of that term in the Davis-Bacon Act and, therefore, would be included in the "site of work" under the proposed rule.

At Braddock, each of the floating structures will be about the length of a football field[4] and are obviously integral to the construction of the dam and lock. The Contract Solicitation describes the contract work as follows:

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[4] The Contract Solicitation states that the floating structures "will be approximately 333 feet long by 106 feet wide by 40 feet high and the other one will be approximately 265 feet long by 106 feet wide by 22 feet high."

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> The work consists of construction of a new gated dam using innovative, in-the-wet, float-in construction techniques. The new gated dam will consist of four 110 foot wide tainter gate bays separated by gate piers and will be situated between the existing lock on the right bank and new abutment, currently under construction, on the left bank. A portion of the dam and a portion of each gate pier will be constructed as two hollow floating structures. . . . The foundation system will consist of an excavated area with sheet pile cut off walls and concrete and the tainter gates will be structural steel fabrications. The tainter gates will be operated using direct connected hydraulic cylinders, powered by individual hydraulic power units and controlled through a PLC network.

In this case, the actual construction of significant segments of the public work will occur at the second location and the "site of the work" moves with the floating structures during construction and as the structures are finally placed in the dam.[5] Indeed, the floating structures will be constructed on or near the water, floated in the water to the dam and gate piers, and submerged into the dam and gate piers. There is no doubt that the place where the hollow floating structures will be constructed is "the actual physical site of the public work under construction." *Cavett v. U.S. Department of Labor*, 101 F.3d 1111, 1115 (6th Cir. 1996).

The need for the proposed rule is clearly demonstrated by these projects because the Corps of Engineers asserted that the construction of the two massive hollow floating structures, which will comprise the vast bulk of the new gated dam, is "off-site fabrication and assembly" work. The Corps of Engineers took the position that "Davis-Bacon Act provisions would not apply to the contractor-furnished fabrication facility for the subject project." The bid solicitation (Section 00800, Clause 22) purported to define "the 'site of the work' for purposes of Davis-Bacon as three clearly demarcated work areas, a disposal area, an offloading facility, and an outfitting pier. Excluded were location(s) where construction of the float-in segments of the dam will be performed.[6]

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[5] The Contract Solicitation specifically states that the Contractor is required to "locate and provide" the site for the construction of the structures:

> These structures will be fabricated and partially assembled at an off-site location, transported to the project site and submerged onto a prepared foundation system. The Contractor will be required to locate and provide the off-site location where these structures will be fabricated.

[6] 52.77-4050 III Davis-Bacon Act: "Site of the Work" — For the purposes of FAR clause 52.222-6, Davis-Bacon Act, the "site of the work" is defined as the limits of the contractor's work area at the Braddock Lock and Dam, the Left Bank Work Area, the RIDC

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A second example involves the Olmsted Locks and Dam where the Corps of Engineers issued specifications for construction of a new gated dam on the Ohio River. The bid specifications issued by the Corps of Engineers for this contract provide:

> A. Location and Method of Pontoon Construction.
>
> Provide the location of the facility that will be used to construct the pontoons. Indicate if the pontoons will be fabricated by the prime contractor, a subcontractor, or a manufacturer. Indicate if this is an undeveloped site acquired for this project only or if this is a developed pre-existing facility. If it is a developed pre-existing facility indicate what additional development is required for this project. . . . Provide a detailed plan describing the construction and launching methods that will be used for the pontoon sections. Provide details describing how the facility will be cycled for the construction of the 11 individual pontoons & test selection. Provide details of the proposed facility's elevation in relationship to the adjacent river, and steps proposed to prevent flooding of the proposed facility.
>
> B. Location and Method of Precast Element Construction.
>
> Provide the location of the facility that will be used to construct the precast concrete elements required for this project. Indicate if the precast elements (including pontoon bulkheads, nose pier, pylon and lower land wall sections) will be fabricated by the prime contractor, a subcontractor, or a manufacturer. . . . Provide a detailed plan describing the construction methods that will be used for the precast elements. Amendment of Solicitation DACW27-99-R-0019 (Olmsted Approach Walls) May 20, 1999.

As the above contract descriptions indicate, the dam and gated piers will primarily consist of the floating structures. Without the floating structures, the public work contemplated in the contract would not exist. Under the proposed rule, the site-of-the-work definition would encompass the construction of the massive hollow floating structures that will become part of the new gated dams at the Braddock Locks and Dam and the Olmsted Dam on the Ohio River.

---

disposal area, the Duquesne Offloading Facility and Outfitting Pier, and the Right Bank Work Area downstream of 11th Street. For the purposes of this clause, the contractor-furnished fabrication and assembly site for the float-in concrete segments is not considered to be a part of the "site of the work."

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Construction of these massive floating structures are significant portions of the "public work" and, therefore, should be included in the "site of work" under the Act and its regulations.

IV. THE FINAL RULE SHOULD INCLUDE COVERAGE OF LOCATIONS THAT ARE DIRECTLY RELATED TO THE COVERED CONSTRUCTION PROJECT

LIUNA urges the Department of Labor to issue a final regulation on the definition of the "site of the work" to include not only locations established specifically for the purpose of constructing a significant portion of a public building or public work, but also to include locations used for activities such as temporary batch plants, fabrication facilities, borrow pits and tool yards that are directly related to the covered construction project, provided those locations are dedicated exclusively or nearly so to supporting that project. The foregoing comments on new construction technologies which make possible construction of significant portions of a project at several locations is clearly shown by the numerous projects referred to underway and planned and the large body of professional and technical literature cited above.

The same justification for recognizing locations established specifically for the purpose of constructing a significant portion of a building or work as "sites of work" for Davis-Bacon purposes applies to locations used for activities such as temporary batch plants, fabrication facilities, borrow pits and tool yards that are directly related to the covered construction project, provided those locations are dedicated exclusively or nearly so to supporting that project. The use of such facilities was similarly not contemplated when the Davis-Bacon Act was passed in 1935 because of the limits of construction technologies at that time and LIUNA urges DOL to issue a final rule which reflects and is justified by this modern-day construction reality.

Also, DOL's current definition of "construction, prosecution, completion, or repair" in Section 5.2(j) includes all transportation between the site where the construction called for in the contract will remain upon completion and other locations dedicated to the project and considered part of the site of the work within the meaning of Section 5.2(l). Neither *Midway*, nor *Ball, Ball and Brosamer* and *L.P. Cavett* require DOL to amend its definition of "construction prosecution, completion, or repair" in Section 5.2(j) of its regulations as proposed in the NPR. LIUNA opposes a change to this definition to allow only transportation of materials between locations considered "sites of the work" as defined in proposed Section 5.2(l) to be covered by the Davis-Bacon and Related Acts. 65 Fed. Reg. At 57273. LIUNA supports the position of the Building and Construction Trades Department, AFL-CIO, asking DOL to refrain from adopting the proposed amendment of Section 5.2(j) of its regulations, but publish for notice and comment a proposal to repromulgate the definition of "construction, prosecution, complection, or repair" that it withdrew at the time it adopted the current definition as an interim final rule. 57 Fed. Reg. 19204 (May 4, 1992).

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V. CONCLUSION

LIUNA supports the NPR's proposed amendment of the definition of the "site of the work" in Section 5.2(l) to cover locations where significant portions of the building or work are constructed and further urges DOL to extend the definition not only to work performed at locations established specifically for the purpose of constructing a significant portion of a public building or public work, but also to locations that are dedicated exclusively, or nearly so to performance of a contract or project covered by the Davis-Bacon and Related Acts without regard to the geographic proximity to other "sites of the work." In addition, we urge DOL to reconsider its proposed change to the definition of "construction prosecution, completion, or repair" in Section 5.2(j) and reinstate the definition of these terms that it used from 1941 until May 4, 1992 that includes transportation of materials and supplies by employees of contractors and subcontractors covered by the Davis-Bacon and Related Acts.

2002-004-66

Merit Mechanical Inc.

P.O. Box 2109 • 9630 153rd Ave. N.E., Space B1 • Redmond, Washington 98073-2109
(425) 883-9224 • FAX (425) 867-0962 • WA Reg.# MERITMI163CM • OR Reg.# 021242
www.meritmechanical.com

February 23, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street NW, Room 4035
Washington, D.C. 20405

Re: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of the "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. Merit Mechanical, Inc. is a privately owned Mechanical Contractor that has served all of Western Washington and parts of Oregon for 20 years.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. More specifically, the final cost of Merit Mechanical's and other small contractor's projects would be increased by approximately 10%. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Roderick V. Kirkwood
Merit Mechanical, Inc.

2002-004-67

"Marty Clinch"
<clinch@ibew34.org>

02/23/2004 10:01 AM

To: farcase.2002-004@gsa.gov
cc:
Subject: Prevailing wages on secondary worksites

Dear Lurie Duarte,
It has been brought to my attention the Federal Regulation Council is in the process of adopting proposed rules requiring contractors to pay prevailing wages on all secondary worksites. The Davis-Bacon Act protects the wages and fringe benefits of millions of workers in this country so they may enjoy a decent standard of living. Closing the loopholes on contractors who do not pay the rightful wages and fringe benefits on secondary worksites will even the playing field for those contractors who DO pay the correct wages and fringe benefits. I support the Federal Regulation Council's decision to adopt these rule changes. Thank you for your time and consideration.
Marty Clinch

2002-004-68

"Janice Raymer"
<JaniceRaymer@abellelevator.com>
02/23/2004 01:00 PM

To: farcase.2002-004@gsa.gov
cc:
Subject: Re: FAR case 2002-004

February 23, 2004

General Services Administration

FAR Secretariat (MVA)

1800 F Street, NW, Room 4035

Washington, D.C. 20405

Attn: Laurie Duarte

Re: FAR case 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters.

Abell Elevator International, Inc. is an open shop elevator company who services, repairs and installs elevators, escalators and dumbwaiters. We work mainly in the south and mid west and we have 95 employees. We work on federally funded projects and we do not want the Council to extend the coverage of the Davis-Bacon Acts's prevailing wage requirements to secondary worksites. The proposed rules's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographical scope of the Davis-Bacon

2002-00468

Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with back pay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Thank you for your assistance.

Very truly yours,

Abell Elevator International, Inc.

Janice Raymer

Secretary

WILSON & BUIST, INC.
General and Engineering Contractors
CGC 016739
CUC057165

3467 W. Hillsboro Blvd., #6
Deerfield Beach, FL 33442
(954) 426-5301
Fax No.: (954) 427-6319

2002-004-69

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

Re: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of Work") FAR Case # 2002-004

Dear Ms. Daurte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site work" on projects covered by Davis Bacon Act or related acts (68 Fed. Reg.703). Wilson & Buist is a small family owned Engineering Contracting Company. Our primary location for work is the south Florida market.

The proposed work rule that would extend the coverage of the Davis Bacon Act's prevailing wage requirements to secondary work sites would add another layer of restrictions on a over regulated industry. The additional paper work as well as the financial burden would go a long way in forcing the small contractors out of business. If the rules are put in retroactive this is a burden that we could not of even planned for.

Please realize that the small contractors do not have the resources to absorb the continuing additional regulations that our Government keeps adding to stay in business. If the desire of the Government is to eliminate the small and family owned companies this is the best way of accomplishing that task.

Respectfully yours,

Tom Buist

Tom Buist

Rec'd 2/24/04

NOTCH
MECHANICAL CONSTRUCTORS
85 LEMAY STREET CHICOPEE MA 01013
TEL: 413.534.3440 FAX: 413•534•4111
www.notch.com

2002-004-70

February 18, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

Re: **Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work")**
FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. Notch Mechanical Constructors is a family owned mechanical contracting firm serving southern New England.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with back pay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must full comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Steven Neveu, President
Notch Mechanical Constructors

Rec'd 2/24/04

SOTA
CONSTRUCTION SERVICES, INC.

2002-004-71

February 16, 2004

General Services
FAR Secretariat(MVA)
1800 F Street ,NW, Room 4035
Washington, DC 20405

Re: FAR Council's proposed rule of Site of the work 68 Fed.Reg 74403

Dear Ms. Duarte:

Please review my comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. Sota Construction Services located in the Pittsburgh area is a family-owned construction and property development company with 20 plus employees and annual revenues of 11 million.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with back pay for secondary sites on on-going projects would be wholly absorbed by small contractors. It would also severely limit the proposals that we would receive from cabinet and door suppliers among others. Cost would go through the roof. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely

Ernest Sota
Sota Construction Services , Inc

Rec'd 2/24/04

SOTA CONSTRUCTION SERVICES, INC. • 80 UNION AVENUE • PITTSBURGH, PA 15202 • **412-766-4630** • FAX: 412-766-4634
E-MAIL: esota@sotaconstruction.com **WEBSITE**: www.sotaconstruction.com

2002-004-72

BILLICK & SONS, INC.

ELECTRICAL CONTRACTORS

• SUPERIOR ELECTRICAL INSTALLATIONS •

615 W. ELIZABETH AVENUE LINDEN, NEW JERSEY 07036 908-862-2220

N. J. STATE LICENSE NO. 281 & NO. 6120 BUSINESS PERMIT NO. 281 & NO. 6120 FAX 908-862-6329

February 18, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, DC 20405

RE: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work")
FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters, 68 Fed. Reg. 74003. Billick and Sons, Inc. is Electrical Contractor, family owned with average sales of $750,000.00, we serve Central and Northern New Jersey.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of the proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractor, like fabricating brackets, assembling fixtures and panels plus even the delivery of materials to the job. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Your immediate attention to this matter would be greatly appreciated.

Sincerely,

Clifford Billick

Read 2/24/04

SCHULTZ BROS. ELECTRIC CO.

ELECTRICAL CONTRACTORS AND ENGINEERS

3160 FAIRFAX TRFWY. • KANSAS CITY, KS 66115 • 913.321.8338 • FAX 913.342.9550

2002-004-73

February 18, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, NW, Room 4035
Washington, D.C. 20405

Re: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters, 68 Fed Reg. 74403. Schultz Brothers Electric Co. is an electrical contracting company providing installation services on commercial and light industrial project sites throughout the country.

The council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary work sites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small business. The cost associated with back pay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Roger N. Schultz
Schultz Brothers Electric Company

BICSI CORPORATE MEMBER

2/24/04

2002-004-74

CLOCK ELECTRIC INC.

1624 Coutant Avenue ~ Lakewood, Ohio 44107-5228 ~ Phone (216) 221-1400 ~ Fax (216) 228-7090
Electrical Contracting & Design Industrial ~ Commercial ~ Institutional

February 17, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

Re: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004.

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters, 68 Fed. Reg. 74403. Clock Electric, Inc. is a family owned Commercial and Industrial Electrical Contractor serving the area of Northern Ohio.

It is the opinion of Clock Electric, Inc. that Council should not extend the coverage for the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of work", the Department of Labor's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with back pay for secondary sites on on-going projects would totally absorbed by small contractors, (15% to 20% of the original project cost). Future work would have the same percentage of cost therefore, escalating the cost of government projects. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Charles E. Clock
Clock Electric, Inc.

Rec'd 2/24/04

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, NW, Room 4035
Washington, D.C.

2004-004-75

Re: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. I started Jim Plunkett Inc. over 20 years ago. We are a glass and glazing subcontractor in the Midwest. This rule would affect us. The Davis-Bacon Act is a very harmful thing for our company.

The council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000, the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

The retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses like mine. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Thanks for your time,

Jim Plunkett
JPI

JPI
13380 "N" Hwy
Platte City MO 64079

Rec'd 2/24/04

2002-004-76

ELECTRICAL GENERAL CORPORATION

Electrical Contractors Since 1961

February 16, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, NW, Room 4035
Washington, DC 20405

Dear Ms. Duarte:

Re: Comments on FAR Case No. 2002-004, Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work")

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. Electrical General Corporation is a family-owned electrical contractor serving Maryland, Virginia and the District of Columbia, with annual revenues of approximately $22 million.

It is our belief that the Council should not extend Davis-Bacon prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" appears to violate standing court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act and we would urge it to exercise its discretion by rejecting this proposed Rule.

Moreover, the retroactive provisions of this proposal would be devastating to Federal contractors, particularly small businesses such as ours. The cost associated with back pay for secondary sites on on-going projects would be wholly absorbed by small contractors. The impact of additional warehousing and prefabrication costs would not only effect small contractors, such as ourselves, but those who may be subcontracting with us for various portions of our work. Before considering such a dramatic and far-reaching expansion of the Davis-Bacon Act, its impact should be examined in light of the Regulatory Flexibility Act and an analysis conducted of the cost of this Rule and its effect on small businesses and its findings published for public comment.

Sincerely,

Clinton M. Heine
President

2/24/04

9070-A Junction Drive • Annapolis Junction, MD 20701-1141 • (301) 725-5700 • (301) 953-7966 • (410) 792-0022
team@electricalgeneral.com
FAX (301) 953-3811 • (410) 792-0162

Doherty, Inc.
2211 Peacock Road
Richmond, IN 47374
765-935-2111 Office

2002-004-77

February 17, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

RE: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related act, and related matters. 68 Fed. Reg. 74403. Doherty Inc. is a family-owned agricultural enterprise company participating in federal programs as a second tier supplier.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of the proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small business and publish it for public comments.

Sincerely,

Michael J. Doherty
Doherty Inc.

Rcvd 2/24/04

SERVICE — SPEED — SATISFACTION

WINANDY GREENHOUSE COMPANY, INC.

Greenhouse Manufacturers, Builders and Heating Engineers

New → **"SUN-MATE"** ← *ReNew*

RICHMOND, INDIANA 47374
2211 PEACOCK ROAD
SINCE 1919

Phone (765) 935-2111
Fax (765) 935-2110

Henry R. Doherty (Ray)
Michael J. Doherty (Mike)
Henry T. Doherty (Hank)

2002-004-78

February 17, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

RE: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related act, and related matters. 68 Fed. Reg. 74403. Winandy Greenhouse Company, Inc. is a Greenhouse Manufacturer selling pre-fabricated greenhouses to contractors doing USDA projects throughout the United States.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of the proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small business and publish it for public comments.

Sincerely,

Henry R. Doherty
Winandy Greenhouse Co., Inc.

Rec'd 2/24/04

2002-004-79

hth companies, inc.

February 16, 2004

Mechanical Insulation and General Contractors

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N. W., Room 4035
Washington D.C. 20405

RE: Comments of Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Constructions ("Site of Work")
FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments to the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters, 68 Fed. Reg. 74403. hth companies, inc. is a family owned mechanical insulation company serving the Midwest with annual revenues of $12,000,000.

The council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rules additional definition of "site of work" that covers secondary sites violated settled court decisions concerning the property geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work." The DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. The council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,
hth companies, inc.

Gregory E. Hoberock
President

GEH/iw

1191 Clearview Road
Union, MO 63084
Phone: (636) 583-8698
Fax: (636) 583-5971
E-Mail: hth@hthcompanies.com
Website: hthcompanies.com

Rec'd 2/24/04

ABC
ASSOCIATED BUILDERS AND CONTRACTORS, INC.

Wolgast CORPORATION

Executive Offices

Executive One Building
4835 Towne Centre Road
Suite 203
Saginaw, MI 48604

Phone: (989) 790-9120
Fax: (989) 790-9053

Corporate Services
Field Operations
Professional Services
Human Resources

1494 North Graham Road
Freeland, MI 48623

Phone: (989) 790-9120
Fax: (989) 781-0748

www.wolgastcorporation.com

2002-004-80

February 16, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, DE 20405

RE: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. Wolgast Corporation is an employee-owned construction company and is based on the merit-shop philosophy, serving primarily markets in the State of Michigan.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of the work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work", the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small business. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Brian R. Stadler
Wolgast Corporation

rec'd 2/24/04

2002-004-81

Gropp ELECTRIC, INC.

PO Box 3246
Spokane WA 99220-3246
Ph. (509)534-4000 Fax(509)534-5202

February 16, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

Re: Comments on proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work")
FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. Gropp Electric, Inc. is an electrical contractor in the Inland Northwest including Fairchild Air Force Base.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's Definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of the proposal would be devastating to federal contactors, particularly small business. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Tad A Gropp

Tad Gropp
Gropp Electric, Inc.

Rcvd 2/24/04

2002-004-82

ATTN: Laurie Duarte

RE: FAR case 2002-004

I am writing to urge the Federal Acquisition Regulation Council to adopt the proposed rule to require construction contractors to pay Davis-Bacon Act prevailing wages at secondary worksites.

As a member of the central Illinois construction community, during the last decade I have personally observed a perversion of the Davis-Bacon Act by many unscrupulous contractors. More and more, rather than pay mandated DBRA wages, these companies simply set up a site a mile down the road to fabricate portions of public works construction projects historically performed on site.

Even though these secondary sites are set up to prefabricate parts for the primary project, these contractors claim to be exempt from prevailing wages for this fabrication and for the transportation to the primary site.

This loophole should not be allowed to continue, as being against the intent of the Davis-Bacon Act, and being against public policy as well.

If an asphalt or concrete plant is set up to serve a large highway project, the question of proximity to the project should have no bearing on the wages paid. The intent of the Davis-Bacon Act is clearly being circumvented through this manipulation, and could be quickly clarified by adoption of the proposed rules.

Thank you for your consideration.

Dan Silverthorn
Executive Director
West Central Illinois
Building and Construction Trades Council

2

2002-004-83

Cedar Lake ELECTRIC, Inc.
COMMERCIAL • RESIDENTIAL
— An Equal Opportunity Employer —
20700 Bagley Avenue • Faribault, Minnesota 55021
(507) 334-9546 • (800) 658-7002
FAX (507) 334-5402

February 16, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

Re: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters, G8 Fed. Reg. 74403. **Cedar Lake Electric, Inc.** is a family owned electrical contracting business serving Central and Southern Minnesota. **Cedar Lake Electric** provides a wide range of electric services available, offering notable specialties in high voltage systems, fire alarms, emergency service, design/build with AutoCAD support and electrical engineering resources.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "Site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with back pay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,
CEDAR LAKE ELECTRIC, INC.

Jay Valentyn
President

FEB 25 2004

FERGUSON
CONSTRUCTION CO.

400 Canal Street, P.O. Box 726
Sidney, OH 45365-0726
Phone: 937-498-2381
Fax: 937-498-1796

2002-04-84

February 16, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

Re: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-04

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. Ferguson Construction Company is a general contractor providing construction services to the industrial, commercial, and institutional markets. Our territory includes Ohio, Indiana, and Kentucky.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work", the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

FERGUSON CONSTRUCTION COMPANY

Thomas L. Pleiman
Controller

FEB 2[illegible]

2002-004-85

TWO J'S INDUSTRIES

123 Garlisch Drive
Elk Grove Village, IL 60007
Ph: 847.437.6510
Fax: 847.437.6583
www.twojspainting.com

Services

- Commercial Finishes
- Industrial Floors
- Corrosion Control
- Shop Coat
- Wall Systems
- Specialty Projects

Member

- Associated Builders & Contractors
- Painting and Decorating Contractors of America
- Steel Structures Painting Council

National Service

1.800.94.TWOJS

ABC ASSOCIATED BUILDERS AND CONTRACTORS, INC.

February 16, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

RE: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte,

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. Two J's is a family-owned painting contractor.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary sites violated settled court decision's concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rule adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small business contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Dave Henneman
Two J's

FEB 25 2004

TWO J's INDUSTRIES

123 Garlisch Drive
Elk Grove Village, IL 60007
Ph: 847.437.6510
Fax: 847.437.6583
www.twojspainting.com

2002-004-86

Services

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Member

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- Painting and Decorating Contractors of America
- Steel Structures Painting Council

National Service

1.800.94.TWOJS

ABC
ASSOCIATED BUILDERS AND CONTRACTORS, INC.

February 16, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

RE: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte,

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. Two J's is a family-owned painting contractor.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary sites violated settled court decision's concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rule adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small business contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Gerald B. Milos
Two J's

FEB

2002-004-87

SWAM ELECTRIC CO., INC.

490 HIGH STREET • HANOVER, PA 17331-2124 • PHONE: (717) 637-3821
FAX: (717) 637-8964 • EMERGENCY: (717) 637-3824
WEB PAGE: http://www.swamelectric.com
E-MAIL: swam@swamelectric.com

February 16, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street N. W., Room 4035
Washington, DC 20405

Re: **Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004**

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. Swam Electric Co., Inc. is an electrical contractor doing new installation, repair and maintenance type work and we also design control systems and power distribution systems. We are a privately-owned business with annual revenues over $5,000,000. Our work areas include Pennsylvania, Maryland, Delaware and the District of Columbia.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary work sites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

(continued forward)

Service to Customers
Working as a Team Toward Goals of Excellence
Action and Communication
Motivated to Personal Growth

004-87

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with back pay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Thank you for your attention to the above.

Yours truly,

G. E. Bange Pres.

Glenn E. Bange
President

GEB/mm

FEB

Southern Electrical Services

2002-004-88

February 17, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W. Room 4035
Washington, D.C. 20405

Re: Comments on FAR Case No. 2002-004 ("Site of the Work")
Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction.

Dear Ms. Duarte:

Southern Electrical Services, Inc. is an Electrical Contractor with a Contractors License to do Commercial and Industrial Construction in 12 Southern States. We would like to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the David-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403.

We ask that the council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

It is our understanding that there is a retroactive provision that covers the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The retroactive provisions of this proposal would be devastating to our business and our subcontractors, which are small businesses. When we bid on federal contract projects, the bids are based on the prevailing wage at the time of the bid. If we had to retroactive pay for "site of work" on these projects our company and our subcontractors would incur a significant loss. Beside the cost of pay to employees for "site of work" there would be cost in determining who and when this work was done, this would take our accounting department a tremendous amount of time to accomplish. We would have to also monitor our subcontractor's records.

We ask the Council to comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Bruce Gibson

Bruce Gibson, President
Southern Electrical Services, Inc.

445 Metroplex Dr. • Nashville, TN 37211 • (615) 831-2626 • FAX (615) 832-4642

2002-004-89

DAVE'S ELECTRIC INC.
1545 PARAMOUNT PARKWAY
BATAVIA, IL 60510-1469
(630)262-1720 FAX(630)262-1730

February 18, 2004

Ms. Laurie Duarte
General Service Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

Re: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No.2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. Dave's Electric Inc. is a well established electrical contractor in the Chicagoland area. Dave's has been in business for 15 years, with the majority of work being performed in new construction of commercial buildings and office build outs. We also have extensive experience in industrial machine hookups and installations.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary work sites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work" the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon act.

Moreover, the retroactive provision of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with back pay for secondary sites on on-going projects would be wholly absorbed by small contractors. Due to signatory dues, Dave's Electric Inc. would incur extreme cost in matching their health insurance, wage rate of pay, etcetera. This is true only because of their inflated expenses. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Kay Henzel

Kay Henzel
Dave's Electric Inc.

2002-004-90

ARD
CONTRACTING, INC

February 16, 2004

Ms. Laurie Duarte
General Service Administration
FAR SECRETARIAT
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

Re: Comments on FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg 74403. Ard Contracting, Inc. is a $35 Million a year contractor specializing in industrial and commercial concrete work. We are a family owned company operating mainly in the southeastern area of the country.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirement to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates court decision concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provision of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. The council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

ARD CONTRACTING, INC.

Jimmy Ard
Vice-President

2129 Richard Arrington, Jr. Blvd. So. • Birmingham, Alabama 35209 • 205/870-0035 • FAX 870-4263

Associated Builders and Contractors, Inc.

Associated Builders and Contractors
OF FLORIDA, INC.

P.O. Box 10038 ❖ Tallahassee, FL 32302-0038 ❖ Phone (850) 222-0000 ❖ Fax (850) 222-0095
Visit ABC on the Internet at ***www.abcflorida.com***

2003 PRESIDENT
Timothy M. Keating
R.C. Stevens Construction Co., Inc.

Legislative Counsel
Richard Watson *rwatsn@aol.com*

2002-004-91

February 16, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street NW, Room 4035
Washington, DC 20405

RE: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of work" on projects covered by the Davis-Bacon Act or related acts, and related matters, 68 Fed. Reg. 74403. I am Legislative Counsel for Associated Builders & Contractors of Florida, Inc. ABC has over 1700 corporate members in Florida employing over 100,000 individuals in the industry. ABC represents every segment of commercial, merit-shop construction from general contractors to subcontractors and suppliers.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Richard Watson
Legislative Counsel

CLACKAMAS CONSTRUCTION INC
P O Box 279
Boring OR 97009
Phone: 503-663-1144
Fax: 503-663-6251

2002-004-92

February 16, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street NW, Rm 4035
Washington, DC 20405

Re: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-2004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and matters. 68 Fed. Reg. 74403. Clackamas Construction, Inc. is a small family owned Company that does site and underground utilities work in the Western & Central parts of Oregon.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work" the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the David-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. Small contractors would wholly absorb the cost associated with backpay for secondary sites on on-going projects. The company would experience high wages, possible causing company to shut down. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Connie Mueller

Connie Mueller
Clackamas Construction, Inc.

February 16, 2004

2002-004-93

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

RE: **Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004**

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403, Gaylor Group, Inc. is the largest electrical contractor in the state of Indiana. We perform approximately $80,000,000 of work annually in the private and public sector.

The council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. This would cost in excess of hundreds of thousands of dollars. The Council just fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Chuck Goodrich
Operations Manager

GAYLOR GROUP, INC.
11711 North College Avenue, Suite 150
Carmel, IN 46032
P.O. Box 9757, Carmel, IN 46082
317.843.0577 • Fax 317.848.0364
www.gaylor.com

LARSON PLUMBING & UTILITY CO.
887-6234
FAX (361) 887-0657

2002-004-94

605 CANTWELL • P.O. BOX 10709 • CORPUS CHRISTI, TEXAS 78460-0709

TO: Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N. W., Room 4035
Washington, D.C. 20405

RE: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte,

February 16, 2004

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403, Larson Plumbing & Utility Co. is a Texas Corporation, and a Plumbing Contractor serving the Corpus Christi area.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary work sites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work" the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. Most of our work is on public projects, and the price to do this work is fixed. Additional cost must be handled as an add to the contracts. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Nick Llanes
Larson Plumbing & Utility Co.

2002-004-95

CRECO

Concrete
Construction
Contractors

CRECO, INC.
9300 D'ARCY ROAD
UPPER MARLBORO, MARYLAND 20774
(301) 350-1200 • FAX (301) 499-4520

February 16, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, DC. 20405

Re: Comments on Proposed Rule Regarding Labor Standards Provision Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Beacon Act or related acts, and related matters. 68 Fed. Reg. 74404. CRECO is a Construction Contractor that is family owned, working in the DC., Virginia and Maryland areas.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirement to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary site violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastation to federal contractors, particularly small businesses. The cost associated with back pay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Thomas W. Hawkins
President

FEB

PLUMBING & UTILITY CO.
LARSON
887-6234
FAX (361) 887-0657

605 CANTWELL • P.O. BOX 10709 • CORPUS CHRISTI, TEXAS 78460-0709

2002-004-96

TO: Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N. W., Room 4035
Washington, D.C. 20405

RE: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte,

February 16, 2004

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403, Larson Plumbing & Utility Co. is a Texas Corporation, and a Plumbing Contractor serving the Corpus Christi area.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary work sites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work" the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. Most of our work is on public projects, and the price to do this work is fixed. Additional cost must be handled as an add to the contracts. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely, Randy Lee Larson

Randy L. Larson
Larson Plumbing & Utility Co.

FEB 2 5

2002-004-97

4055 W. Jackson St., Macomb, IL 61455
Phone: (309) 837-1258 Fax: (309) 833-4993
E-mail: laverd@macomb.com

February 16, 2004

Ms. Laurie Duarte
General Services Adm.
FAR Secretariat
1800 F. Street, N.W., Room 4035
Washington, D.C. 20405

Re: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contract Invoicing Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters; 68 Fed. Reg.74403. Laverdiere Construction is a family owned, General Construction company that has been in business since 1976 in the West-central Illinois area dealing in commercial, paving and sewer/water projects.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work", the Department of Labor's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Jack Laverdiere
President, Laverdiere Construction

FEB

2002-004-98

County Environmental Company

A Safer Environment For Tomorrow...

461 New Churchmans Road
New Castle, Delaware 19720
Phone: (302) 322-8946
Fax: (302) 324-8482
E-mail: countyenv@msn.com

County Group Companies
County Insulation Company
County Environmental Company

February 16, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

Re: Comments on Proposed Rule Regarding Labor Standards Provision Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte,

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. County Environmental Company is an environmental service contractor located in New Castle, De.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Thank you,

James W. Betley
President
County Environmental Company

2004-004-99

GENERAL
MECHANICAL
Commanding Performance™

GENERAL MECHANICAL SYSTEMS, INC.
138 Sicker Road
P.O. Box 1226
Latham, New York 12110-1226
(518) 785-4800
Fax: (518) 785-6382
www.gmech.com

February 16, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

Re: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work")
FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. General Mechanical Group is a New York State based mechanical and electrical contracting company which contracts for commercial, public and private projects.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirement to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the Department of Labor's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. Small contractors would wholly absorb the cost associated with backpay for secondary sites for on-going projects. These additional costs would cause tremendous financial hardship to our company. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Dennis L. Deeb
President
General Mechanical Group

Gypsum Systems, Inc.

2002004-100

640 Pound Road • P.O. Box 449 • Elma, NY 14059-0449 • (716) 652-5700 • Fax: (716) 652-0076

Ms Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

February 16, 2004

Re: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of work" on projects covered by the Davis-Bacon Act or related matters. 68 Fed. Reg. 74403. Gypsum Systems, Inc. is a subcontractor specializing in metal studs, drywall and acoustical ceilings, servicing Western & Upstate New York, we are locally owned and operated with annual revenues of about 14 million.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of Work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work." The DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Fred Boeheim
President, Gypsum Systems, Inc

H&S INC
HERR & SACCO, INC.
www.herr-sacco.com
PROCESS PIPING • MILLWRIGHT SERVICES • CUSTOM METAL FABRICATION

2002-004-101

February 16, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

Re: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

This letter is sent to you in opposition to any further changes in the Davis-Bacon Act, such as what is being proposed in FAR Case 2002-004.

Whenever basic rules are changed, confusion abounds, and costs, either direct or indirect, escalate for those of us trying to run a business at a profit.

I strongly oppose any expansion of the Act.

Sincerely,
HERR & SACCO, INC.

James A. Miller
President

JAMig

ELMWOOD AVENUE, PO BOX 99, LANDISVILLE, PA 17538-0099
PHONE: 717-898-0111 • FAX 717-898-3173

OIL CAPITAL ELECTRIC

2002-004-102

February 17, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, NW Room 4035
Washington, DC 20405

Re: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction (Site of the Work) FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on the projects covered by the Davis-Bacon Act or related acts, and related matters, 68 Fed. Reg. 74403. Oil Capital Electric is an electrical, family owned company, with 150 employees.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. Whle the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites for on-going projects would be wholly absorbed by small contractors. The Council must fully comply with Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Jim Lewis
Oil Capital Electric

FEB 25 2004

12718 E. 55th Street Tulsa, OK 74146-6221 Phone: 918-317-3255 Fax: 918-317-7490 OK Lic #001588

2002-004-103

Leonard A. Kraus Co., Inc.

February 16, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N>W>, Room 4035
Washington, D. C. 20405

RE: COMMENTS ON PROPOSED RULE REGARDING LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS INVOLVING CONSTRUCTION ("SITE OF THE WORK") FAR CASE # 2002-04

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. Leonard A. Kraus is a small family operated construction company within the Baltimore Metro area. We are a sub-contractor and our mainstay is drywall and light gauge framing. We employee about 60 people on a full time basis and a host of third tier subs.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the council claims to be following the Department of Labor's definitional rules adopted in 200 on "site of the work," the Department of Labor's definition is invalid according to extensive court decisions. The Council has the discretion and the legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small business. The cost associated with back pay for secondary

800 Race Road • Baltimore, Maryland 21221-3114
Phone (410) 391-8020 • Fax (410) 574-8651

004-103

sites on on-going projects would be wholly absorbed by small contractors. For us this would involve mostly material handling (which would be almost impossible to sort out) and transportation costs. In addition we would expense our limited office personnel to determine back pay on any wage scale project we have undertaken for the time covered by the retroactive provision. These are cost we cannot afford. Our job market is very tight and extremely competitive. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small business and publish it for public comment.

Sincerely,

Leonard A. Kraus Jr.

Leonard A. Kraus Jr.
Leonard A. Kraus Co., Inc.

2002-004-104

Hudak's Asbestos Removal, Inc.
Asbestos & Lead Abatement
Demolition

February 16, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W. Room 4035
Washington, D.C. 20405

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters, 68 Fed. Reg. 74403. Hudak's Asbestos Removal, Inc. is a family owned, Asbestos and Lead Abatement company, serving the Baltimore , Washington, and Virginia areas.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites for on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Timothy Hudak, President
Hudak's Asbestos Removal, Inc.

P.O. Box 72430 •8229 Pulaski Highway •Baltimore, MD 21237
(410) 238-2000 •Fax (410) 238-1099

2004

2002-004-105

Hudak's Insulation, Inc.

Commercial • Industrial
Insulation Contractor

February 16, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W. Room 4035
Washington, D.C. 20405

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters, 68 Fed. Reg. 74403. Hudak's Insulation, Inc. is a family owned, Mechanical Insulation company, serving the Baltimore , Washington, and Virginia areas.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites for on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

James P. Hudak, President
Hudak's Insulation, Inc.

FEB 25 2004

P.O. Box 72430 • 8229 Pulaski Highway • Baltimore, MD 21237
(410) 238-2000 • Fax (410) 238-1099

2002-004-106

February 16, 2004

WITTBURN
ENTERPRISES
INCORPORATED

Ms. Laurie Duate
General Services Administration
FAR Secretariat
1800 F Street, N.W. Room 4035
Washington, DC 20405

ELECTRICAL
CONSTRUCTION
COMMERCIAL
INDUSTRIAL
RESIDENTIAL

RE: Comments on Proposed Rule Regarding Labor Standard Provisions Applicable to Contracts Involving Construction (Site of the Work) FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed.Reg. 74403. Wittburn Enterprises, Inc. is an electrical construction company employing some 45 people based in Buffalo, New York and serving the Western New York area.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposal rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with back pay and secondary sites on on-going projects would be wholly absorbed by small contractors. The council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

WITTBURN ENTERPRISES, INC.

Charles G. Jones, Jr.
President

CGJ/sb
Doc: FAR Case No.2002-004

FEB 25 2004

36 CYPRESS STREET / PO BOX 1122 ELLICOTT STATION / BUFFALO, NEW YORK 14205-1122 / (716) 856-6610 / FAX (716) 856-8770

2002-004-107

MJ MECHANICAL SERVICES, INC.

2040 MILITARY ROAD :: TONAWANDA, NY 14150
(716) 874-9200 :: FAX: (716) 874-6438 :: WWW.MJMECHANICAL.COM

February 16, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F. Street NW, Room 4035
Washington, DC 20405

RE: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. MJ Mechanical Services, Inc. is a full service HVAC installation and service company located in Upstate New York.

The council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites, violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work", the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with back pay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Michael D. Poole
President
DavisBacon16febL04

FEB 25 2004

TERHORST & RINZEMA CONSTRUCTION CO.

GENERAL CONTRACTORS

2002-004-108

February 16, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street NW Room 4035
Washington DC 20405

RE: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. Ter Horst & Rinzema Construction Co., is a small, family-owned, general contracting firm with annual revenues averaging between $5 to $7 million a year in the West Michigan area.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with back-pay for secondary sites on on-going projects would be wholly absorbed by small contractors. The current provisions are already overly burdensome, for paperwork & procedures, please don't make them any more so. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Randall Ter Horst, President
Ter Horst & Rinzema Construction Co.

FEB 25 2004

5990 E. FULTON SUITE A ADA, MI 49301 (616) 676-9181 FAX (616) 676-2864

2002-004-109

1200 McDougal St. ~ P.O. Box 1086 ~ Fostoria, OH 44830
Phone 419-435-7033 ~ Fax 419-435-5346

February 16, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, DC 20405

REF.: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte;

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters, 68 Fed. Reg. 74403. Whitta Construction, Inc. is a family owned asphalt road contractor. We do State, County and Township work.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work", the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the David-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses like us. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment. Hopefully this will not be necessary.

Sincerely,
Whitta Construction, Inc.

Jim Whitta

James C. Whitta
President

FEB 25 2004

OVERLAND
CONSTRUCTORS, INC.

5036 South 135th Street • P.O. Box 451145 • Omaha, NE • 68145-6145 • (402) 895-5510 • Fax 895-0761

2002-004-110

February 16, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 "F" Street, N.W., Room 4035
Washington, D.C. 30405

RE: Comments on Proposed Rule Regarding Labor Standards Provision
Applicable to Contracts Involving Construction ("Site of the Work")
FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. Overland Constructors, Inc., is a small to medium-sized general contractor in Omaha, Nebraska.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary work sites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to Federal contractors, particularly small businesses. The cost associated with back pay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Cordially,

Robert C. Huber
Overland Constructors, Inc.

RCH/pl

FEB 20 2004

2002-004 111

Central Mechanical Wichita, Inc.
Plumbing #2395 • Mechanical #1787
P.O. Box 47343 • Wichita, KS 67201-7343 • 316-267-7676 • FAX 316-267-7684

February 14, 2004

To: Ms. Laurie Duarte
General Service Administration
FAR Secretariat
1800 F. St. N.W. Room 4035
Washington, D.C. 20405

Re: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No.2002-004

Dear Ms. Duarte,

Thank you for the opportunity to submit comments on the FAR council's proposed rule regarding the definition of "Site of the Work" on projects covered by Davis-Bacon Act or related acts, and related matters. 68 fed. Reg. 74403.

Central Mechanical Wichita Inc. is a Mechanical construction company providing plumbing, heating & air conditioning construction services. We are a Veteran owned business serving Kansas with a 12 million/ yr volume.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "Site of Work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of Work", the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with back pay for secondary sites on on-going projects would be wholly absorbed by small contractors. With the uncertainty surrounding this issue we intend to suspend bids on federal projects. The lack of bids by others & us will increase costs to the government due to a lack of competition.

004-111

The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comments. We intend to suspend bids on federal projects until this is resolved.

Sincerely,

Phil A. Sewell
President
CMW Inc.

PAS: jp

Cc: Representative Todd Tiahrt

2002-004-112

KESSEL CONSTRUCTION INC.

345 HIGH STREET, P.O. Box 737
BRADFORD, PENNSYLVANIA 16701-0737
PHONE (814) 362-4696
FAX (814) 362-2176

2201 WEST GRANDVIEW BLVD., SUITE 1
ERIE, PENNSYLVANIA 16506-4507
PHONE (814) 838-1590
FAX (814) 838-6492

February 16, 2004

Ms. Laurie Duarre
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D. C. 20405

Re: Comments on Proposed Rule Regarding Labor Standard Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No.2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. G8 Fed. Reg. 74403. Kessel Construction Inc. is a General Contractor, Industrial and Commercial Buildings, family-owned, annual revenues of $9,000,000.00, serving in Northern Pennsylvania and Southern New York.

The council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of work", the DOL's definition is invalid according to extensive court decisions. The Council has discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with back pay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely
Kessel Construction, Inc.

Richard L. Kessel
President

FEB 25 2004

2002-004-113

J. Wilkinson, Inc.
General Contracting and Design
Commercial / Design Build

38 Green Acres, Glen Carbon, IL 62034
(618) 288-6600 fax: (618) 288-6609
e-mail: jwilkinsoninc@charter.net

Metal Buildings - Post Frame Buildings - Concrete Construction - Steel Erection - Renovation - Carpentry

February 16, 2004

Ms. Lori Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

Re: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. J. Wilkinson, Inc., our family-owned company established in 1990, employees between 15-30 workers whom all enjoy the benefits and opportunities of our merit shop business. We are a General Contractor performing work in the mid-western states of Illinois, Indiana, and Missouri, and our company and it's employees strongly oppose any extensions of the Davis-Bacon standards.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the council claims to be following the department of Labor's definitional rules adopted in 2000 on "site of the work", the DOL's definition is invalid according to extensive court decisions. The council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

With the rising costs of construction on public works projects reaching uncontrollable proportions, it is time to say NO to organized labor and the Clinton cronies. This newest regulation is no more than a prop for organized labor to strangle down our economics. I believe a more fair and economical standard would be to abolish the Davis-Bacon Act in its entirety.

FEB 25 2004

004-113

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with back pay for secondary sites on on-going projects would be wholly absorbed by small contractors. The council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Jamie Wilkinson, Pres.
J. Wilkinson, Inc.

Crites Electric Inc.
COMMERCIAL & RESIDENTIAL
NEW WIRING & REWIRING
DATA & FIBER OPTICS

02-16-04

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

2002-004-114

Re: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004.

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. Crites Electric Inc. is a company that has a valid WV Electrical Contractor License, based out of Buckhannon, WV. We provide commercial and residential new wiring and re-wiring to Upshur County and Surrounding Counties.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retro-active provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with back-pay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Rusty Crites
President-Crites Electric Inc.

FEB 25 2004

50 S. Kanawha St
Buckhannon, WV 26201

304-472-0148 Phone
304-472-0149 Fax

www.criteselectric.com

County Insulation Company
461 New Churchmans Road
New Castle, DE. 19720
Phone: (302) 322-8946 Fax: (302) 322-2894

2002-004-115

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

February 16, 2004

Re: Comments on Proposed Rule Regarding Labor Standards Provision Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte,

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. County Insulation Company is a mechanical insulation contractor located in New Castle, De.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Thank you,

James W. Betley
President
County Insulation Company

2004

Cumberland Valley Chapter
Associated Builders & Contractors
319 West Howard Street Hagerstown, Maryland 21740
301-739-1190 Fax 301-739-1026
416-7247 Frederick
abccvc@mindspring.com
www.abccvc.com

February 18, 2004

2002-004-116

General Services Administration
FAR Secretariat (MVA)
RE: FAR case 2002-2004
1800 F Street, NW Room 4035
ATTN: Laurie Duarte
Washington, DC 20405

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. ABC is a national trade association with over 24,000 firms across the nation, and locally over 200 employers are members of the Cumberland Valley Chapter.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Joan L. Warner
President
Cumberland Valley Chapter
Asscciated Builders and Contractors

FEB 25 2004

Perram Electric, Inc. 2002-004-117

AN EQUAL OPPORTUNITY EMPLOYER

6882 Ridge Road • Wadsworth, Ohio 44281 • (330) 239-2661 • FAX (330) 239-2642

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

Good Morning,

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. Perram Electric, Inc. is a heavy highway electrical contractor that specializes in traffic signalization, airport electrical, and highway lighting projects. We carry a full time staff of forty people.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Truth is, this change will once again through into chaos a system that is working smoothly. Increased confusion on the part of the contractors, and the contract administrators, will only create increased litigation expense, as well as compliance expense. Where it seems apparent that costs are not an issue when it comes to Federal decision making, this decision will further stretch an already tight budget, reducing the quantity or quality of the construction projects that will be built in the future - without any real gain to any individuals.

Sincerely,

Dale B. Perram
Vice President

FEB 25 2004

ASSOCIATED
PREVAILING WAGE
CONTRACTORS, INC.

Fred Baragona, CRC, CRA
President

2002-004-118

Master Plan Sponsor for the Contractors & Employees Retirement Plan & Trust • Education & Information for the Construction & Service Industry

February 17, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat (MVR), Room 4035
1800 F Street, NW
Washington, DC 20405

RE: FAR Case 2002-004, Federal Acquisition Regulation; Labor Standards for Contracts Involving Construction; Proposed Rule (68 Fed. Reg. 74403, December 23, 2003).

Dear Ms. Duarte:

The Associated Prevailing Wage Contractors (APWC) hereby submits comments to the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) on the proposed rule to incorporate the Davis-Bacon Act revisions from 2000 into the Federal Acquisition Regulation (FAR case 2002-004). The notice of proposed rulemaking was published December 23, 2003 in the Federal Register.

APWC is a national organization comprising nearly 1,000 members that participate in federal, state and local projects covered by prevailing wage laws. The association focuses on human resource issues and provides education, compliance assistance, group benefit plans and other assistance to help companies comply with federal and state prevailing wage laws.

We help contractors understand their responsibilities with regard to payment of prevailing wages and fringe benefits to their workers. We were concerned in 2000 when the Department of Labor extended coverage of the Davis-Bacon Act to sites of work other than the primary site of work. We are equally concerned to see that these changes may now be incorporated into the Federal Acquisition Regulation (FAR). We believe that this proposed change should be postponed until the legal issues involved in the court decisions can be permanently resolved.

The courts have long held that extension of Davis Bacon to sites other than the primary site of work is indefensible. We believe that to amend the FAR, before it may be appropriate to do so, will increase costs to the federal government at a time when it can ill afford to do so.

If these changes to the FAR are indeed implemented, we suggest some revisions that would not penalize contractors for trying to achieve efficiency. One of the changes proposed by the Councils is making any wage determination for a secondary site retroactive to the first day of work on that site, no matter the financial consequences for

541 Chandler Rd. ★ Ruston, Louisiana 71270-3476 ★ 318/768-2224 ★ FAX 318/768-2341 ★ Email: apwc@bayou.com

004-118

the contractor. For example, contractors who utilize a secondary site for efficiency reasons will be penalized if the subsequent wage determination results in higher costs for them. Making the wage determination retroactive will exacerbate the problem. These extra costs will undoubtedly be passed on to the government in subsequent procurements. At the very least, we suggest that the Councils remove the retroactive requirement on secondary site wage determinations.

Secondly, the proposed rule says that workers who transport materials from a secondary site to the primary site of work must be covered by the wage determination applicable to the primary site. We disagree, for similar reasons cited above. The reason contractors use secondary sites is to achieve efficiency in fulfilling the terms of the contract. If a wage determination is to be applied to these workers at all (a notion disputed by the courts), it should at least be the wage determination for the secondary site.

As stated earlier, the issues surrounding Davis-Bacon and its applicability to secondary sites of work are still not resolved. We would suggest that the Councils not amend the FAR until these issues are permanently resolved. We appreciate the opportunity to submit comments.

Sincerely,

Fred Baragona

Freddie J. Baragona, Jr.
President

2002-004-119

JAVENS MECHANICAL CONTRACTING CO.

59160 Madison Ave.
Mankato, MN 56001

PHONE: 507/388-7332
FAX: 507/388-4192

February 17, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

Re: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters, 68 Fed. Reg. 74403. Javens Mechanical Contracting Company is a privately owned Mechanical Contracting company serving South Central Minnesota. Our company provides plumbing, heating and design-build installation and services for all sizes of commercial and industrial projects.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with back pay for small contractors would wholly absorb secondary sites on on-going projects. The Council must fully comply with the Regulatory Flexibility Act and Conduct and analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Duane Javens

Duane Javens
President of Javens Mechanical Contracting

bcc: ABC Government Affairs

FEB 25 2004

TEFCO
CONSTRUCTION COMPANY

2002-004-120

General Services Administrator
FAR Secretariat (MVA)
1800 F Street, NW Room 4035
Attn: Laurie Duarte
Washington, D.C, 20405

RE: FAR case 2002-004

Dear Ms. Duarte,

Thank you for the opportunity to submit on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. REG 74403. TEFCO Construction is a general contractor that specializes in framing, drywall, acoustical ceiling and instillation of millwork. We are an open shop company, family owned whose annual revenue exceeds two million dollars. TEFCO performs work in the City of Chicago as well as the surrounding suburbs.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary work sites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to the federal contractors, particularly small businesses. The cost associated without backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Tom Flanagan
President
TEFCO Construction Co.

FEB 25 2004

7744 West Monroe, Forest Park, Illinois 60130
Phone 708 366 0025 Fax 708 366 0156
www.tefcoconstruction.com

February 16, 2004

2002-004-121

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F. Street, S.W., Room 4035
Washington, D.C. 20405

Re: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. Parish Corporation is a General Contractor that performs Contracting Services on Commercial and Industrial Projects in Central Michigan.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Rugulatory Fexibility Act and conduct an analysis of the cost of this rule to small business and publish it for public comment.

Sincerely,

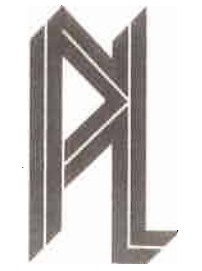
James D. Parish, President
Parish Corporation

JDP/ml

FEB 25 2004

Parish Corporation
GENERAL CONTRACTORS DESIGN BUILD

1501 Rensen Street, Suite A Lansing, Michigan 48910
517.393.9511 Fax: 517.393.7060 E-Mail: Parish@A1Access.net



2002-004-122

February 16, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F. Street, N.W., Room 4035
Washington, DC 20405

RE: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

PINKERTON & LAWS, INC.

Jeffery S. Jernigan
Executive Vice President

JSJ/cb

FEB 25 2004

1165 NORTHCHASE PARKWAY, SUITE 100, MARIETTA, GA 30067 PHONE: 770.956.9000 FAX: 770.618.8688

Hudak's Construction Services, Inc.
Architectural, Mechanical and
Electrical Demolition

2002-004-123

February 16, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W. Room 4035
Washington, D.C. 20405

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters, 68 Fed. Reg. 74403. Hudak's Construction Services, Inc. is a family owned, Demolition company, serving the Baltimore , Washington, and Virginia areas.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites for on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Timothy Hudak, President
Hudak's Construction Services, Inc.

FEB 25 2004

P.O. Box 72430 • 8229 Pulaski Highway • Baltimore, MD 21237
(410) 238-2000 • Fax (410) 238-1099

JIM FISCHER, INC.

2605 S. Casaloma Drive
Appleton, WI 54914
Phone: (920) 734-0519
Fax: (920) 734-0564

2002-004-124

February 17, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F. Street, N.W., Room 4035
Washington, D.C. 20405

RE: Comments on Proposed Rule Regarding Labor Standards Provision Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg 74407. Jim Fischer, Inc is a family owned concrete contractor with annual revenue of five (5) million dollars serving Wisconsin in the Fox River Valley and a 60 to 80 mile radius of the Valley.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violated settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with back pay for secondary sites on on-going projects would be wholly absorbed by small contractors. We anticipate this to be no less than 5% in labor increases, but more important how this would be enforced to remain competitive. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Steve Schultz
Vice President

FEB 25 2004

JIM FISCHER, INC.

2605 S. Casaloma Drive
Appleton, WI 54914
Phone: (920) 734-0519
Fax: (920) 734-0564

2002-004-125

February 17, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F. Street, N.W., Room 4035
Washington, D.C. 20405

RE: Comments on Proposed Rule Regarding Labor Standards Provision Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

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Sincerely,

Jim Fischer
President

FEB 25 2004

JIM FISCHER, INC.

2605 S. Casaloma Drive
Appleton, WI 54914
Phone: (920) 734-0519
Fax: (920) 734-0564

2002-004-126

February 17, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F. Street, N.W., Room 4035
Washington, D.C. 20405

RE: Comments on Proposed Rule Regarding Labor Standards Provision Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

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Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with back pay for secondary sites on on-going projects would be wholly absorbed by small contractors. We anticipate this to be no less than 5% in labor increases, but more important how this would be enforced to remain competitive. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Randy Fischer
Vice President

FEB 25 2004

JIM FISCHER, INC.

2605 S. Casaloma Drive
Appleton, WI 54914
Phone: (920) 734-0519
Fax: (920) 734-0564

2002-004-127

February 17, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F. Street, N.W., Room 4035
Washington, D.C. 20405

RE: Comments on Proposed Rule Regarding Labor Standards Provision Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

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Sincerely,

Cheryl Wood
Secretary

FEB 25 2004

Town Center Electric, Inc.

21297 Hilltop St. Southfield, MI 48034
(248) 355-1600 Fax (248) 355-9795

2002-004-128

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. Town Center Electric is a small electrical contractor with ten employees serving southeastern Michigan.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Beacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with back pay for secondary sites on on-going projects would be wholly absorbed by small contractors. The cost for work at a local high school to meet such a requirement would run an additional $36,000.00. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Carol VanSlyke

Carol VanSlyke
Office Manager
Town Center Electric

FEB 25 2004

Town Center Electric, Inc.

21297 Hilltop St. Southfield, MI 48034
(248) 355-1600 Fax (248) 355-9795

2002-004-129

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. Town Center Electric is a small electrical contractor with ten employees serving southeastern Michigan.

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Sincerely,

John Schuman
President
Town Center Electric

FEB 25 2004

Town Center Electric, Inc.

21297 Hilltop St. Southfield, MI 48034
(248) 355-1600 Fax (248) 355-9795

2002-004-130

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. Town Center Electric is a small electrical contractor with ten employees serving southeastern Michigan.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Beacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

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Sincerely,

Thomas Klimkiewicz
Estimator
Town Center Electric

FEB 25 2004

2002-004-131

J.W. WILDE MECHANICAL, INC.

CMCO 56819
CFCO 56859

February 16, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F. Street N.W., Room 4035
Washington, D.C. 20405

RE: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. J.W. Wilde Mechanical, Inc. is a plumbing and HVAC contractor with an annual volume of approximately $10,000,000 that serves Florida West Coast.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Very Truly Yours,

J.W. Wilde
C.E.O
J.W. Wilde Mechanical, Inc.

FEB 25 2004

12600 Automobile Boulevard • Clearwater, Florida 33762-4717 • Telephone (727) 572-6620 • Fax (727) 572-4358
www.wildemechanical.com

2002-004-132

BAY MECHANICAL & ELECTRICAL CORPORATION
OH LIC #19039

February 18, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

RE: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. Bay Mechanical & Electrical Corporation is a mechanical and electrical contractor serving northeast Ohio. BMEC has annual sales revenue of approximately $20,000,000.00 and a large portion of our projects fall under the regulations of the Davis-Bacon Act.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. This would be devastating to small contractors and businesses. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

J. Kurt Koepf
Vice President

FEB 25 2004

S:\Kurt Koepf\021804 FAR CASE 2002-004.doc

2221 West Park Drive • Lorain, OH 44053-1197 • Phone 440-282-6816 • Fax 440-282-1544

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
333 John Carlyle Street, Suite 200 • Alexandria, VA 22314
Phone: (703) 548-3118 • FAX: (703) 548-3119 • www.agc.org

JACK KELLEY, President
SAM HUNTER, Vice President
STEPHEN E. SANDHERR, Chief Executive Officer
JAMES D. WALTZE, Senior Vice President
JAMES STEPHENS, Treasurer
DAVID R. LUKENS, Chief Operating Officer

February 23, 2004

2002-044-133

Ms. Laurie Duarte
General Service Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

Re: Proposed Rule Regarding Labor Standards for Contracts Involving Construction, FAR Case No. 2002-004

Dear Ms. Duarte:

The Associated General Contractors of America, Inc. (AGC) appreciates the opportunity to comment on the proposed amendments to the Federal Acquisition Regulation (FAR) published in the December 23, 2003, issue of the Federal Register, intending to implement the revised definitions of "Construction" and "site of the work" in the Department of Labor (DOL) regulations, to clarify several definitions relating to labor standards for contracts involving construction, and to make requirements for flow down of labor clauses more precise.

AGC is a national trade association of more than 33,500 firms, including 7,000 general construction contractors and 12,000 specialty contractors in a nationwide network of 100 chapters. These firms are engaged in the construction of the nation's commercial buildings, shopping centers, factories and industrial facilities, warehouses, highways, bridges, tunnels, airports, water works facilities, waste treatment facilities, dams, water conservation projects, defense facilities, multi-family housing projects and residential site preparation and utilities installation. Numerous AGC members perform work subject to the Davis-Bacon Act.

AGC urges the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) to withdraw certain proposed amendments for the reasons discussed below.

1. **The Councils Should Not Adopt Portions of the DOL Regulations That Improperly Expand the Definitions of "Site of the Work" and "Construction"**

The proposed rule seeks to implement DOL regulations revising definitions of "construction" and "site of the work." Although those revisions were purportedly made to conform DOL regulations with federal appellate court decisions, they actually expanded the definitions beyond the boundaries established by the courts and by the statute itself.

2002-004-133

As AGC stated in its comments on DOL's proposal, the changes fail to limit prevailing wage coverage to workers "employed directly upon the site of the work" as required by the Davis-Bacon Act and affirmed by the court of appeals decisions in *Building & Construction Trades Dept., AFL-CIO v. United States Department of Labor Wage Appeals Bd. (Midway Excavators)*, 932 F. 2d 985 (D.C. Cir. 1991), *Ball, Ball and Brosamer v. Reich*, 24 F. 3d 1447 (D.C. Cir. 1994), and *L.P. Cavett Co. v. U.S. Dep't of Labor*, 101 F. 3d 1111 (6th Cir. 1996). Those comments are attached hereto and incorporated into the present comments.

The Councils are under no legal obligation to implement the DOL regulations. Because the DOL regulations improperly expand the scope of the Davis-Bacon Act's coverage, the Councils should not do so.

2. The Proposed Rule Improperly Imposes Responsibility on Contractors to Determine Whether the Davis-Bacon Act Applies to Work at a Secondary Site

The proposed rule would also add a regulatory provision that requires the contractor ("offeror") to "notify the Government if – (1) The offeror intends to perform work at any secondary site, as defined in paragraph (a)(1)(ii) of the Davis-Bacon Act clause of this solicitation; and (2) The Davis-Bacon Act is applicable to the work at any secondary site." Determination of whether the Davis-Bacon Act applies to particular work is the responsibility of the contracting agency, with DOL as the final arbiter, not the contractor. (*See* 29 C.F.R. §§ 5.5, 5.13.) Because this portion of the proposed rule improperly shifts the burden onto contractors, it should not be adopted.

3. The Proposed Rule Improperly Renders Newly-Incorporated Wage Determinations Retroactive

In addition, the proposed rule would amend the Davis-Bacon Act clause at FAR 52.222-6 to render any secondary-site wage determination that is newly incorporated into a contract to take effect retroactively from the first day on which work under the contract was performed at that site, without any adjustment in contract price or estimated cost. This retroactive imposition of the prevailing wage requirement constitutes an unfair and unlawful deprivation of contractors' due process rights, and should not be adopted.

For all of the reasons stated above, including the incorporated comments attached hereto, AGC believes that portions of the proposed rule improperly expand coverage of the Davis-Bacon Act and urges the Councils to withdraw those portions.

Respectfully submitted,

Denise Gold

Denise S. Gold
Associate General Counsel, Labor & Employment Law

004-133

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

333 John Carlyle Street, Suite 200 • Alexandria, Virginia 22314 • (703) 548-3118 • FAX (703) 548-3119 • www.agc.org

RALPH W. JOHNSON, President ROBERT J. DESJARDINS, Senior Vice President LARRY C. GASKINS, Vice President
FRANCIS W. MADIGAN, JR., Treasurer
STEPHEN E. SANDHERR, Executive Vice President & CEO DAVID R. LUKENS, Chief Operating Officer

October 20, 2000

T. Michael Kerr, Administrator
Wage and Hour Division
Room S-3018
Employment Standards Administration
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Re: Notice of Proposed Rulemaking on the Labor Standards Provisions Applicable to Contracts Covering Federally Financed And Assisted Construction; 29 CFR Part 5 (65 FR 57270, 9/21/00)

Dear Mr. Kerr:

The Associated General Contractors of America, Inc. (AGC) is a national trade association of more than 33,000 firms, including 7,500 of America's leading general construction contractors. These firms are engaged in the construction of the nation's commercial buildings, shopping centers, factories and industrial facilities, warehouses, highways, bridges, tunnels, airports, water works facilities, waste treatment facilities, dams, water conservation projects, defense facilities, multi-family housing projects and residential site preparation and utilities installation. Many AGC members perform work subject to the Davis-Bacon Act.

AGC commends the Department of Labor for its interest in conforming the Davis-Bacon implementing regulations at 29 CFR Part 5.2(j) and Part 5.2(l) with the court decisions on material delivery and the statutory boundaries of the "site of the work." Unfortunately, AGC does not believe that the proposals respect the limitations imposed by the statute and affirmed by the courts. AGC opposes the proposed amendments and recommends that they be withdrawn for the following reasons:

- The proposals do not limit prevailing wage coverage to those "employed directly upon the site of the work" as required by the Davis-Bacon Act and affirmed by the court of appeals decisions in *Midway Excavators, Ball, Ball & Brosamer, Inc.* and *L.P. Cavett Company*;

- The proposals would establish unlawfully vague standards for determining when delivery truck drivers or off-site locations would be subject to the Davis-Bacon Act; and

- Whether the Davis-Bacon Act should apply to off-site locations or activities is a policy decision that Congress has reserved the discretion and authority to make.

AGC recommends that the Department of Labor withdraw the proposals and propose amendments to 29 CFR Part 5.2(j) and Part 5.2(l) that:

- Exempt delivery truck drivers from Davis-Bacon coverage; and

- Precisely and objectively define the "site of the work" to cover only those facilities, laborers and mechanics that are either (1) located or employed directly upon the physical site of the public building or public work under construction, or (2) employed at a facility equal to or smaller in size than the public building or public work under construction that is also dedicated and contiguous to the public building or public work under construction.

Following are AGC's specific comments on the proposals.

Coverage of Material Supply and Transportation [29 CFR Part 5.2(j)]

Material Delivery Truck Drivers

AGC opposes the proposed amendment to 29 CFR Part 5.2(j). AGC agrees that, as a general matter, the transportation of materials occurring off the actual construction site is not "directly upon the site of the work" and not subject to the Davis-Bacon Act.

The problem is that the proposed amendment would perpetuate the policy underlying the 1992 amendment to § 5.2(j). Truck drivers transporting material to or from the "site of the work" (as defined in the proposed amendment) would continue to be subject to Davis-Bacon coverage. AGC believes that this is inconsistent with the Act and the court of appeals decision in *Midway Excavators*. There is no support in the *Midway* decision for the policy articulated in the proposed amendment. The court held as a general principle that:

> [T]he Act covers only mechanics and laborers who work *on the site* of the federally-funded public building or public work, not mechanics and laborers employed off-site, such as suppliers, materialmen, and material delivery truck drivers, regardless of their employer. . . . Material delivery truck drivers who come onto the site of the work merely to drop off construction materials are not covered by the Act even if they are employed by the government contractor . . . 29 CFR 5.2(j), insofar as it includes off-site material delivery truck drivers in the Act's coverage, is invalid.

Building and Construction Trades Department, AFL-CIO v. U.S. Department of Labor Wage Appeals Board and Midway Excavators, Inc., 932 F.2d 985, 992. (D.C. Cir. 1991).

The court unequivocally stated that the Davis-Bacon Act does not apply to material supply or material supply truck drivers, and that 29 CFR 5.2(j) is invalid to the extent that it includes off-site drivers. The Department notes the court's holding in its comments on the proposal but inexplicably states that "no further rulemaking on this issue is necessary or appropriate," then proposes amendments to § 5.2(j) that contradict the court and the statute.

The truck drivers included in the proposed amendment are not employed on-site as defined by the statute and affirmed by the court, and they do not perform the work of a "laborer or mechanic." The fact that they spend time on the construction site during the performance of their job is not relevant under the *Midway* decision. Their job is composed of deliveries to, and hauling from, the construction site. They are not "employed" on it. Accordingly, 29 CFR 5.2(j) should be amended to exclude material and supply truck drivers from prevailing wage coverage while engaged in activities associated with the delivery of material to the site or the hauling of material from the site, regardless of who employs them and regardless of how much time they spend on-site engaged in these activities.

De Minimus Threshold

The Department advises that it believes that material supply truck drivers must be paid Davis-Bacon prevailing wages "for any time spent on-site which is more than *de minimus*." (65 FR 57272). The Department does not define this term or offer any guidance on its interpretation or application, other than to observe that the drivers in the *Midway* case were not usually on the site for more than ten minutes.

AGC does not believe that any threshold is necessary, appropriate or supportable under the *Midway* decision. The *Midway* court focused on what work is performed and where it is performed. In order to be subject to Davis-Bacon coverage, truck drivers must be employed on the site as laborers or mechanics. Truck drivers employed to haul material to or from a federal construction project are not employed on the site and do not usually perform any work on the site outside the delivery/hauling function.

Assuming, only for purposes of discussing the Department's proposal, that Davis-Bacon coverage of material delivery truck drivers is appropriate, AGC does not believe that the *de minimus* threshold is a permissible or acceptable standard to determine this coverage. It is subjective, vague and ambiguous. It does not fairly advise contractors or contracting agencies of the standards with which they are expected to comply.

Government mandates regulating business must provide the kind of notice that will enable the regulated industry to understand what conduct is required or prohibited. Likewise, they may not authorize or encourage arbitrary or discriminatory enforcement. *City of Chicago v. Morales*, 527 U.S. 41, 119 S.Ct. 1849 (1999); *Forsyth County, Georgia v. The Nationalist Movement*, 505 U.S. 123, 112 S.Ct. 2395 (1992). With respect to Department of Labor regulations, the U.S. Court of Appeals for the District of Columbia Circuit has explained that:

044-133

> In order to satisfy constitutional due process requirements, regulations must be sufficiently specific to give regulated parties adequate notice of the conduct they require or prohibit. . . . Accordingly, regulations will be found to satisfy due process so long as they are sufficiently specific that a reasonably prudent person, familiar with the conditions the regulations are meant to address and the objectives the regulations are meant to achieve, would have fair warning of what the regulations require.

Freeman United Coal Mining Company v. Federal Mine Safety and Health Review Commission and Secretary of Labor, 108 F.3d 358, 361 (D.C. Cir. 1997).

The Department's proposal fails to meet this standard. Nothing in the proposed amendment to § 5.2(j) would even apprise contractors or contracting agencies of the existence of a *de minimus* standard. Likewise, the proposal does not even suggest incorporating objective standards or factors into the amended regulation that would allow affected parties to determine whether it applied to their performance of a federally financed construction project. For this reason, the proposal is unconstitutionally vague and violates the Due Process Clause.

Assuming, only for the purposes of discussing the Department's proposal, that any threshold for material delivery and hauling truck drivers is appropriate, AGC believes that the Department is legally obligated to propose a clear and quantifiable standard. The standard must permit contractors and contracting agencies to accurately determine the amount of time such drivers are subject to the Davis-Bacon Act in advance of bidding or performing work on a federally financed construction project.

AGC agrees that any occupational classification employed on the site to perform the work of a laborer or mechanic is covered, but only if the amount of time spent on site engaged in this work is substantial. This is consistent with the 20 percent threshold imposed by the Department in other contexts. Foremen and supervisors who spend more than 20 percent of their time on the site performing the work of a construction laborer or mechanic are subject to coverage for the time so spent. *Davis-Bacon and Related Acts Prevailing Wage Resource Book* (1998). However, this coverage is triggered by the work they perform on site, not their mere physical presence on the site.

With respect to the threshold for determining coverage of material delivery and hauling activities performed by truck drivers, AGC believes that a 50 percent threshold is appropriate. The *Midway* court noted that the drivers at issue in that case spent only 10 percent of their workday on the site and that no one argued that this "brief period" was sufficient to trigger coverage (932 F.2d at 989, n. 5).

A 50 percent threshold would be consistent with the court's characterization of the small amount of time that was spent on-site by *Midway* drivers and with its focus on the requirement that an individual must be employed on the site before coverage can be imposed. Only the time that actually exceeds a 50 percent threshold in a workweek and is spent performing the nonexempt work of a laborer or mechanic should be compensated at prevailing wage rates.

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Coverage of the Site of the Work [29 CFR Part 5.2(l)]

Court Decisions

It is important to note that the judicial discussions of the boundaries of the "site of the work" began with the *Midway* court. The court examined the phrase "mechanics and laborers employed directly upon the site of the work" in § 276 (a)(a) of the Davis-Bacon Act and concluded:

> We find no ambiguity in the text: "site of the work" clearly connotes to us a geographic limitation. Thus, the ordinary meaning of the statutory language is that the Act applies only to employees working directly on the physical site of the public building or public work under construction. 932 F.2d at 990.

The statutory boundaries of the Act and the phrase "employed directly upon the site of the work" were again at issue in *Ball, Ball & Brosamer, Inc. v. Reich*, 24 F.3d 1447 (D.C. Cir. 1994). The court rejected the Secretary of Labor's policy arguments contending that a "broad construction" of the Act was justified and necessary to accomplish its "remedial purposes," concluding, "None of this offers any justification for ignoring the clear language of the Act." 24 F.3d at 1452. The court then held that:

> In the end, we reach the same conclusion we did in *Midway*. The statutory phrase "employed directly upon the site of the work," means "employed directly upon the site of the work." Laborers and mechanics who fit that description are covered by the statute. Those who don't are not. 24 F.3d at 1453.

As the Department's proposal notes, the court did observe in *dicta* that the regulation at § 5.2(l)(1) might satisfy the geographic limiting principle of the Davis-Bacon Act if it were applied only to "batch plants and gravel pits located in actual or virtual adjacency to the construction site." 24 F.3d at 1452. The court did not define this term and declined to express an opinion on the validity of such an application. However, the court did state that:

> Instead, the Secretary attempts to find any tiny crack of ambiguity remaining in the phrase "directly upon the site of the work" and cram into it a regulation that encompasses other sites miles from the actual location of the public work – in this case two miles, in another as much as 24 miles and in still another, 3,000 miles from the actual construction location. 24 F.3d at 1452.

The U.S. Court of Appeals for the Sixth Circuit adopted the reasoning and conclusion of the *Ball* decision in *L.P. Cavett Company v. U.S. Department of Labor*, 101 F.3d 1111 (6th Cir. 1996). The magistrate judge had characterized the phrase "directly upon the site of the work" as ambiguous because in constructing a highway it was necessary that the work would "spill over onto nearby areas" not occupied by the final construction work. 101 F.3d at 1114. The court rejected this characterization, holding that:

> [T]he language of the Davis-Bacon Act is not ambiguous. . . . The statutory phrase "employed directly upon the site of the work" means that only employees working directly on the physical site of the public work under construction have to be paid prevailing wages. 101 F.3d at 1115.

The Sixth Circuit also addressed another issue pertinent to the Department's proposed amendments to § 5.2(l)(1) and (2). The court rejected the Department's argument that the asphalt batch plant at issue in the case was in "actual or virtual adjacency" to the Davis-Bacon construction because it was three miles away from a ten mile long highway project. According to the court:

> In our view it is not unreasonable to conclude that while a facility in virtual adjacency to a public work site might be considered part of that site, a facility located two (or in this case three) miles away from the site would not.
>
> Moreover, if the geographic proximity of the Davis-Bacon Act were expanded in the manner advocated by the Department of Labor, we would create the difficult problem of determining which off-site workers were indeed closely enough "related" to the public site to justify inclusion under the Act. The *Ball* court noted as much when it stated, "[T]he Secretary attempts to find any tiny crack of ambiguity remaining in the phrase 'directly upon the site of the work.'" 101 F.3d at 1115.

With respect to the parameters of the site of the work, the *Midway, Ball* and *Cavett* decisions established that:

- The Davis-Bacon Act applies only to those laborers and mechanics employed directly on the physical site of the public building or public work under construction;
- The functional test of the implementing regulation at § 5.2(l)(1) is invalid to the extent that it purports to include "dedicated" but off-site facilities within Davis-Bacon coverage; and
- Off-site facilities that are "in actual or virtual adjacency [within two miles] to the construction site" may be covered.

Department of Labor Site of the Work Proposal

The Department's proposed amendments to § 5.2(l)(1) and (2) ignore the geographic boundaries established by the statute and affirmed by the courts. The Department proposes to redefine the site of the work to include locations "where any significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the contract or project," as well as material supply and other facilities that are dedicated exclusively, or nearly so, to the project and are "adjacent or virtually adjacent to the 'site of the work.'"

The Department proposes a new test to reach off-site locations beyond the "adjacent or virtually adjacent" range. Locations performing a "significant portion" of the "building or work" and established for the performance of the project would be characterized as "secondary locations" of construction, avoiding the restriction of coverage to the public building or public work under construction articulated by the courts. Likewise, material supply operations and other locations would continue to be covered if they are (1) dedicated and (2) "adjacent or virtually adjacent" to either the (3) public building or work under construction or (4) an off-site location performing a "significant portion" of the work.

The Department's proposal may actually represent an expansion of coverage beyond the current language of § 5.2(l). It would create the possibility that off-site facilities supplying or supporting other off-site facilities may be subject to Davis-Bacon coverage in an endless chain, regardless of their location or distance from the construction site. This is precisely the effect identified and rejected by the D.C. Circuit in its observation about the Secretary's "attempts to find any tiny crack of ambiguity remaining in the phrase 'directly upon the site of the work.'" Likewise, the Sixth Circuit rejected this kind of geographic expansion of the Act when it noted the D.C. Circuit's observation and "the difficult problem of determining which off-site workers were indeed closely enough 'related' to the public site to justify inclusion under the Act" if this kind of test were permitted.

The Department advises that it believes that the court decisions do not "preclude Davis-Bacon coverage where significant portions of projects, such as bridges and dams, are actually being constructed at secondary locations." In fact, the decisions do exactly that. Neither the Davis-Bacon Act nor the court decisions on this issue permit or support the extension of prevailing wage coverage to those who are not "employed directly upon the site of the work." As unequivocally explained by the courts, this phrase includes only those working directly on the physical site of the public building or public work under construction. It does not include off-site locations or facilities, even if they are "dedicated" to that work, "established specifically" for the performance of the work or perform a "significant portion" of the work.

The Department's undocumented beliefs about "situations" that "warrant coverage" and the effect of "the literal application of the regulatory language" are policy judgments that Congress has already addressed and, as the D.C. Circuit noted, offer no justification for ignoring the statute. The Department's proposal is devoid of any legislative, regulatory or legal analysis explaining or supporting the Department's authority to create new categories of coverage under the Davis-Bacon Act that include facilities and activities beyond those located and performed directly on the physical site of the public work. Congress knows what language to use if it wants the Davis-Bacon Act to apply to off-site locations or activities. It has not done so and, as the D.C. Circuit concluded in *Ball,* "An agency can neither adopt regulations contrary to statute, nor exercise powers not delegated to it by Congress." 24 F.3d at 1450.

The Department's proposal with respect to the definition of the site of the work is a policy judgment beyond the authority of the Department of Labor. Whether or not the Davis-Bacon Act should apply to off-site locations and activities is the prerogative of Congress to decide. Many bills have been introduced that presented Congress with the opportunity to expand

the Act's coverage in the manner proposed by the Department, and each time Congress has declined [e.g., HR 967 (1995), HR 2042/S.916 (1993), HR 1231 (1993), HR 1987 (1992)]. The responsibility to administer the Davis-Bacon Act does not include the authority to originate prevailing wage policy or to administer the Act or its implementing regulations in ways that contradict the law and federal appellate court decisions.

AGC also believes that the Department's "site of the work" proposal suffers from the same deficiencies as its proposal on the coverage of material supply truck drivers. Like the *de minimus* threshold proposed for material delivery truck drivers, the site of work proposal would create new, undefined tests for coverage.

The proposal would cover sites where a "significant portion" of the building or work is "constructed" if the site is "established specifically for the performance of the contract or project." In addition, locations and operations that are "dedicated exclusively, or nearly so" and are "adjacent or virtually adjacent" to these sites would also be subject to Davis-Bacon Act coverage.

Again, none of these terms are defined and no guidance is offered that would allow a contractor or contracting agency to definitively determine whether an off-site location or activity is subject to the Act. For example, what is a "significant portion?" Is it a certain percentage of the value of the construction contract or a certain percentage of the volume of the construction work? What is the percentage or other test that would trigger coverage? Is a facility established to serve federal and private construction projects "established specifically" or "dedicated exclusively, or nearly so" to federal construction and subject to coverage? What threshold or other factors would be used for this determination? Is a facility located two miles away from of a Davis-Bacon construction site "adjacent or virtually adjacent" to it? What is the geographic range of this concept?

Like the *de minimus* test, the site of work proposal does not provide the regulated community with notice of what activities or locations are subject to Davis-Bacon coverage or a methodology for determining coverage. It creates undefined, subjective terms and conditions and provides no guidance on their application or interpretation. And, like the *de minimus* test, it too is unconstitutionally vague and violates the Due Process Clause.

Conclusion

AGC appreciates the opportunity to comment on the proposed amendments to 29 CFR Part 5.2(j) and 5.2(l). The proposals do not conform to the Davis-Bacon Act or the *Midway, Ball* and *Cavett* decisions. They are also unconstitutionally vague and advance a policy that is beyond the authority of the Department of Labor to originate or impose. AGC opposes the proposals and urges the Department of Labor to withdraw them.

AGC recommends that the Department propose amendments to § 5.2(j) that exempt delivery truck drivers from Davis-Bacon coverage. Likewise, AGC recommends that the Department propose amendments to § 5.2(l) that precisely and objectively define the site of the

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work to cover only those facilities, laborers and mechanics that are either (1) located or employed directly upon the physical site of the public building or public work under construction, or (2) employed at a facility equal to or smaller in size than the public building or public work under construction that is also dedicated and contiguous to the public building or public work under construction.

Sincerely,

William A. Isokait

William A. Isokait
Counsel
Labor & Employment Law

2002-004-BY

ELECTRICAL CONTRACTORS

EDGELINE ELECTRIC CORP.

8019 NO. 2 RD. WEST • P.O. BOX 0467 • MANLIUS, N.Y. 13104-0467 • (315) 682-9780 • Fax (315) 682-9787

February 19, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, DC 20405

Re: **Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work")**
FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related matters. 68 Fed. Reg. 74403, Edgeline Electric Corp. is a commercial electrical contractor who contracts with state and local government to provide electrical installations for Schools and Hospitals. Our small business company and its 14 employee's service the Central New York State Area.

The Council **should not** extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work", the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

2002-004-134

Sincerely,

Stephen E. Lindenmayer,
President
Edgeline Electric Corp.

Cc: ABC Government Affairs
file

2002-004-135

Carpenter, Mountjoy & Bressler

Certified Public Accountants and Advisors

February 17, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

Re: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") *FAR Case* No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. Carpenter, Mountjoy & Bressler, PSC is a CPA Firm assisting many closely held construction companies in Central and Northern Kentucky and Southern Indiana. Our clients employ hundreds of people and work diligently to give back to their respective communities through civic and charitable involvement.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. For some of our clients, this could result in thousands of dollars of additional costs and could very well cause them to shut down their operations. This is certainly not good for the local economy. Please give this serious consideration when proposing the above referenced rule. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Thank you for your time and consideration in this matter.

Sincerely,
CARPENTER, MOUNTJOY & BRESSLER, PSC

Alan M. Rosenberg
Stockholder/Director

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Carpenter, Mountjoy & Bressler, PSC
2300 Waterfront Plaza
325 West Main Street
Louisville, Kentucky 40202-4244
Offices in Louisville, Lexington, Covington and Frankfort

Phone 502-992-2700
Fax 502-568-5626
mail@cmbcpa.com
www.cmbcpa.com

VASKO Electric INC.
4300 Astoria Street
Sacramento, CA
95838
(916)568-7700
fax (916)568-7713

2002-004-136

FEBRUARY 18, 2004

MS. LAURIE DUARTE
GENERAL SERVICES ADMINISTRATION
FAR SECRETARIAT
1800 F STREET N.W. ROOM 4035
WASHINGTON D.C. 20405

RE: COMMENTS ON PROPOSED RULE REGARDING LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACT INVOLVING CONSTRUCTION ("SITE OF THE WORK") FAR CASE NO 2002-004

Dear Ms. Duarte

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matter. 68 Fed. Reg. 74403. Vasko Electric, Inc. is a merit shop contractor performing commercial and industrial electrical installations on both private and public works projects in Northern California and Nevada. We are an individually owned, family orientated corporation which has been in operation for 22 years with annual sales of over $13.0 million.

The council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is valid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contactors. Though we currently do not have any federal contracts underway, an expansion of the "site of work" coverage would deter us from bidding such projects in the future. The council must fully comply with the Regulatory Flexible Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

VASKO ELECTRIC, INC.

Darryl A. Vasko
President

2002-004-137

WOUCH, MALONEY & CO., LLP

Certified Public Accountants

STEPHEN W. WOUCH, CPA*
JOHN F. MALONEY, CPA, CVA+
JACK MICIAK, CPA, MT
LARRY T. LANCE, CPA
JEFFREY S. RIEDER, CPA
JULIE A. SHENNARD, CPA
TERRY C. MARTIN, CPA
ROBERT E. WILLIAMS, CPA
BRIAN P. WIEST
DONNA M. WILDER, CPA
WILLIAM F. DAVIS, CPA
MICHAEL ZABAWA
MATTHEW E. BOGDAN, CPA, CVA
JAMES V. SHATZ
* ALSO LICENSED IN NJ AND FL
+ ALSO LICENSED IN NJ

415 SARGON WAY • SUITE J
HORSHAM, PA 19044-1289

(215) 675-8364
FAX (215) 675-3879
For E-mail Visit Our Website
www.wm-cpa.com

YARDLEY OFFICE
MAKEFIELD EXECUTIVE QUARTERS
301 OXFORD VALLEY RD • #1901B
YARDLEY, PA 19067
(215) 369-1800
FAX (215) 369-2871

FLORIDA OFFICE
THE PINES – SUITE 48
8192 COLLEGE PARKWAY, S.W.
FORT MYERS, FL 33919
(239) 590-6400
FAX (239) 949-7378

MEMBERS OF:
AMERICAN INSTITUTE OF CPA'S
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NEW JERSEY SOCIETY OF CPA'S
FLORIDA INSTITUTE OF CPA'S

February 19, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, DC 20405

Re: Comments of Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. Wouch, Maloney & Co., LLP is a Certified Public Accounting firm, providing accounting and financial planning services to our clients. We have offices located in Horsham and Yardley Pennsylvania and Fort Meyers, Florida.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

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Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Stephen W. Wouch, CPA

Stephen W. Wouch, CPA
Managing Partner

2002-004-138

A.J. KIRKWOOD & ASSOCIATES, INC.
14712 Sinclair Circle • Tustin, CA 92780
Beginning 1883

February 17.2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F. Street, N.W., Room 4035
Washington, D.C. 20405

Re: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comment on the FAR Council's proposed rule regarding the definition for "site work" on projects covered by the Davis-Bacon Act or related acts, and related matters, 68 Fed. Reg. 74403. A.J. Kirkwood & Associates, Inc. is known for our Construction & Engineering with four generations of Electrical Excellence.

The council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of 'site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with back pay for secondary sites on on-going projects would be wholly absorbed by small contractors. Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Lynn G. Holton
President
A.J. Kirkwood & Associates, Inc.

Tel: 714/ 505-1977 • Fax: 714/ 505-7030 • e-mail: ajk-a@ajk-a.com

2002-004-139

WARGO
INTERIOR SYSTEMS, INC. INTERIOR/EXTERIOR CONSTRUCTION One Washington Avenue, Telford, PA 18969 • 215/723-6200
FAX 215/723-0743

February 20, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, DC 20405

Re: **Comments on Proposed Rule Regarding Labor Provisions Applicable to Contracts Involving Construction "Site of Work" FAR Case No. 2002-004.**

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of work" on projects covered by the Davis-Bacon Act or related acts. Wargo Interior Systems is a small, privately held construction company specializing in the commercial installation of acoustical ceilings, metal studs and drywall, with an additional division specializing in the prefabrication of exterior brick back up panels. We serve the areas of southeastern PA, NJ and DE.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of work," the DOL's definition is invalid according to court decisions. The Council has the legal authority to reject the improper expansion of the Davis-Bacon Act.

The retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with back pay for secondary sites on-on-going projects would be wholly absorbed by small contractors. Since we prefabricate exterior panels in our shop and then transport them to job sites the added costs for back pay and transportation would affect us directly. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Very truly yours,

Michael F. Siatkowski
Interior Projects Division

MKS:fk

2002-004-140

NOVA
GROUP INC
Quality & Innovation in Construction

February 13, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

Re: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters 68 Fed. Reg. 74403. Nova Group, Inc. is a general engineering construction company that performs almost exclusively prime construction contracts for the U.S. Department of Defense under prime contracts with either Naval Facilities Engineering Company or the U.S. Army Corps of Engineers. Nova has been performing prime construction contracts for the U.S. Government for well over twenty-five (25) years.

Nova employs between 200 and 400 people, and while not an ESOP, Nova is owned by some twenty of us employees.

Nova is one of the nation's most experienced and respected general engineering contractors, specializing in Type III hydrant fueling systems, waterfront (piers, wharves, submarine and aircraft berthing stations) and utility construction with revenues slightly under $100,000,000. At present we have DoD prime contracts at Travis AFB, California; San Diego Naval Air Station, San Diego California, Davis Monthan AFB, Tucson, Arizona; Pearl Harbor Naval Shipyard, Hawaii, Hickam AFB, Hawaii; Andersen AFB, Guam; and Nevatim AFB, Israel. While Nova self-performs approximately eighty percent (80%) of its work, 72% of the work it subcontracts is to small business.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional

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definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to numerous, relatively recent court decisions such as *Midway Excavators*, and *Ball, Ball & Brosmer, Inc.* and *L. P. Cavett Company*. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with back pay for secondary sites on on-going projects would be wholly absorbed by small contractors. On a number of our projects which, generally, have durations of eighteen months to three (3) years, we batch concrete off-site. The back pay for these projects would be significant. The paperwork, that is, certified payroll reports, would be equally significant. Moreover, many, if not all, of our small business subcontractors do not have the personnel to complete the required paperwork. If the government withholds payment for the work of these subcontractors pending receipt of certified payrolls, these businesses may well go under. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Very truly yours,

NOVA GROUP, INC.

Carole L. Bionda
Vice President/
General Counsel

cc: ABC, Government Affairs

Abc/leg/dbexp

2002-004-141

Southern Tier Sheet Metal Contractors Association

33 Brookside Avenue
Endwell, NY 13760
Phone/Fax: (607) 786-1883

Ms. Laurie Duarte
General Services Administation
FAR Secretariat
1800 F St., NW, Rm 4035
Washington, D.C. 20405

Re: FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for this opportunity to comment on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by Davis-Bacon. The Southern Tier Sheet Metal Contractors Assoc. is a forty year old organization supporting this industry and participating contractors in the southern tier of New York. Our members employ some 200 workers on construction projects throughout New York and near-by states.

Should the Council extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites, the results would prove catastrophic to our members and their workforce. Particularly devastating are the retroactive provisions of this proposal.

We urge you to fully comply with the Regulatory Flexibility Act while conducting an analysis of the costs of this proposal to small businesses. Published results need to be available for public comment.

Sincerely,

Jeffrey B. Huffcut
Manager

2002-004-142

WARGO
INTERIOR SYSTEMS, INC. INTERIOR/EXTERIOR CONSTRUCTION One Washington Avenue, Telford, PA 18969 • 215/723-6200
FAX 215/723-0743

February 20, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, DC 20405

Re: **Comments on Proposed Rule Regarding Labor Provisions Applicable to Contracts Involving Construction "Site of Work" FAR Case No. 2002-004.**

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of work" on projects covered by the Davis-Bacon Act or related acts. Wargo Interior Systems is a small, privately held construction company specializing in the commercial installation of acoustical ceilings, metal studs and drywall, with an additional division specializing in the prefabrication of exterior brick back up panels. We serve the areas of southeastern PA, NJ and DE.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of work," the DOL's definition is invalid according to court decisions. The Council has the legal authority to reject the improper expansion of the Davis-Bacon Act.

The retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with back pay for secondary sites on on-going projects would be wholly absorbed by small contractors. Since we prefabricate exterior panels in our shop and then transport them to job sites the added costs for back pay and transportation would affect us directly. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Very truly yours,

Timothy M. Jeremicz
Secretary/Treasurer

TMJ:fk

2002-004-143

WARGO
INTERIOR SYSTEMS, INC. INTERIOR/EXTERIOR CONSTRUCTION One Washington Avenue, Telford, PA 18969 • 215/723-6200
FAX 215/723-0743

February 20, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, DC 20405

Re: **Comments on Proposed Rule Regarding Labor Provisions Applicable to Contracts Involving Construction "Site of Work" FAR Case No. 2002-004.**

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of work" on projects covered by the Davis-Bacon Act or related acts. Wargo Interior Systems is a small, privately held construction company specializing in the commercial installation of acoustical ceilings, metal studs and drywall, with an additional division specializing in the prefabrication of exterior brick back up panels. We serve the areas of southeastern PA, NJ and DE.

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Very truly yours,

Paul K. Fetch
Vice President

PKF:fk

200-004-144

WARGO
INTERIOR SYSTEMS, INC. INTERIOR/EXTERIOR CONSTRUCTION One Washington Avenue, Telford, PA 18969 • 215/723-6200
FAX 215/723-0743

February 20, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, DC 20405

Re: **Comments on Proposed Rule Regarding Labor Provisions Applicable to Contracts Involving Construction "Site of Work" FAR Case No. 2002-004.**

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of work" on projects covered by the Davis-Bacon Act or related acts. Wargo Interior Systems is a small, privately held construction company specializing in the commercial installation of acoustical ceilings, metal studs and drywall, with an additional division specializing in the prefabrication of exterior brick back up panels. We serve the areas of southeastern PA, NJ and DE.

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The retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with back pay for secondary sites on on-going projects would be wholly absorbed by small contractors. Since we prefabricate exterior panels in our shop and then transport them to job sites the added costs for back pay and transportation would affect us directly. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Very truly yours,

Frank Genghini
Exterior Division

FG:fk

2002-004-145

CONTINENTAL PLUMBING INC.

February 19, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N. W., Room 4035
Washington, D.C. 20405

Re: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. Continental Plumbing is a family owned plumbing construction company working in the Los Angeles, San Bernardino, Riverside, and Orange County area.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary site violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be the following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with back pay for secondary sites on-going projects would be wholly absorbed by small contractors. The Council must fully comply with Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Daniel S. Buckley
Vice President

11165 THURSTON LANE • MIRA LOMA, CALIFORNIA 91752-1427
909/360-8300 • FAX 909/360-8309
CONTRACTOR'S LICENSE #399073

GSA

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GSA Office of Governmentwide Policy

MEMORANDUM FOR RONALD POUSSARD
DIRECTOR
DEFENSE ACQUISITION REGULATIONS COUNCIL

FROM: RODNEY P. LANTIER, DIRECTOR Rodney P. Lantier
REGULATORY AND FEDERAL ASSISTANCE
PUBLICATIONS DIVISION

SUBJECT: FAR Case 2002-004, Labor Standards for Contracts Involving Construction

Attached are additional comments received on the subject FAR case published at 68 FR 74404; December 23, 2003. The comment closing date was February 23, 2004.

Response Number	Date Received	Comment Date	Commenter
2002-004-146	03/02/04	03/23/04	Victor Unruh
2002-004-147	03/02/04	03/23/04	AGC
2002-004-149	03/02/04	02/20/04	PLEUNE
2002-004-150	03/02/04	02/23/04	Merit Mechanical, Inc.
2002-004-151	03/02/04	02/19/04	Tom Greenauer Development, Inc.
2002-004-152	03/02/04	02/19/04	American Asphalt Co., Inc.
2002-004-153	03/02/04	02/24/04	IOVINO Electrical Contracting Co., Inc.
2002-004-154	03/02/04	02/23/04	CNI

U.S. General Services Administration
1800 F Street, NW
Washington, DC 20405-0002
www.gsa.gov

Response Number	Date Received	Comment Date	Commenter
2002-004-155	03/02/04	02/23/04	J.A. Parfrey Co., Inc,
2002-004-156	03/02/04	02/20/04	Sheet Metal Workers' International Association
2002-004-157	03/02/04	02/20/04	WARGO
2002-004-158	03/02/04	02/17/04	ERCO Interior Systems, Inc.
2002-004-159	03/02/04	No Date	Bart Walker Electric
2002-004-160	03/03/04	03/01/04	Lori Hall

Attachments

2002-004-146

February 23, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

Re: **Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004**

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters, 68 Fed. Reg. 74403. MAC Construction & Excavating, Inc. is a family-owned construction company working in the Southern Indiana and Louisville, Kentucky area.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 in "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Victor Unruh, President
MAC Construction & Excavating, Inc.

MAR 2 2004

2002-004-147

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
333 John Carlyle Street, Suite 200 • Alexandria, VA 22314
Phone: (703) 548-3118 • Fax: (703) 548-3119 • www.agc.org

February 23, 2004

Ms. Laurie Duarte
General Service Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

Re: Proposed Rule Regarding Labor Standards for Contracts Involving Construction, FAR Case No. 2002-004

Dear Ms. Duarte:

The Associated General Contractors of America, Inc. (AGC) appreciates the opportunity to comment on the proposed amendments to the Federal Acquisition Regulation (FAR) published in the December 23, 2003, issue of the Federal Register, intending to implement the revised definitions of "Construction" and "site of the work" in the Department of Labor (DOL) regulations, to clarify several definitions relating to labor standards for contracts involving construction, and to make requirements for flow down of labor clauses more precise.

AGC is a national trade association of more than 33,500 firms, including 7,000 general construction contractors and 12,000 specialty contractors in a nationwide network of 100 chapters. These firms are engaged in the construction of the nation's commercial buildings, shopping centers, factories and industrial facilities, warehouses, highways, bridges, tunnels, airports, water works facilities, waste treatment facilities, dams, water conservation projects, defense facilities, multi-family housing projects and residential site preparation and utilities installation. Numerous AGC members perform work subject to the Davis-Bacon Act.

AGC urges the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) to withdraw certain proposed amendments for the reasons discussed below.

1. **The Councils Should Not Adopt Portions of the DOL Regulations That Improperly Expand the Definitions of "Site of the Work" and "Construction"**

The proposed rule seeks to implement DOL regulations revising definitions of "construction" and "site of the work." Although those revisions were purportedly made to conform DOL regulations with federal appellate court decisions, they actually expanded the definitions beyond the boundaries established by the courts and by the statute itself.

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As AGC stated in its comments on DOL's proposal, the changes fail to limit prevailing wage coverage to workers "employed directly upon the site of the work" as required by the Davis-Bacon Act and affirmed by the court of appeals decisions in *Building & Construction Trades Dept., AFL-CIO v. United States Department of Labor Wage Appeals Bd. (Midway Excavators)*, 932 F. 2d 985 (D.C. Cir. 1991), *Ball, Ball and Brosamer v. Reich*, 24 F. 3d 1447 (D.C. Cir. 1994), and *L.P. Cavett Co. v. U.S. Dep't of Labor*, 101 F. 3d 1111 (6th Cir. 1996). Those comments are attached hereto and incorporated into the present comments.

The Councils are under no legal obligation to implement the DOL regulations. Because the DOL regulations improperly expand the scope of the Davis-Bacon Act's coverage, the Councils should not do so.

2. The Proposed Rule Improperly Imposes Responsibility on Contractors to Determine Whether the Davis-Bacon Act Applies to Work at a Secondary Site

The proposed rule would also add a regulatory provision that requires the contractor ("offeror") to "notify the Government if – (1) The offeror intends to perform work at any secondary site, as defined in paragraph (a)(1)(ii) of the Davis-Bacon Act clause of this solicitation; and (2) The Davis-Bacon Act is applicable to the work at any secondary site." Determination of whether the Davis-Bacon Act applies to particular work is the responsibility of the contracting agency, with DOL as the final arbiter, not the contractor. (*See* 29 C.F.R. §§ 5.5, 5.13.) Because this portion of the proposed rule improperly shifts the burden onto contractors, it should not be adopted.

3. The Proposed Rule Improperly Renders Newly-Incorporated Wage Determinations Retroactive

In addition, the proposed rule would amend the Davis-Bacon Act clause at FAR 52.222-6 to render any secondary-site wage determination that is newly incorporated into a contract to take effect retroactively from the first day on which work under the contract was performed at that site, without any adjustment in contract price or estimated cost. This retroactive imposition of the prevailing wage requirement constitutes an unfair and unlawful deprivation of contractors' due process rights, and should not be adopted.

For all of the reasons stated above, including the incorporated comments attached hereto, AGC believes that portions of the proposed rule improperly expand coverage of the Davis-Bacon Act and urges the Councils to withdraw those portions.

Respectfully submitted,

Denise Gold

Denise S. Gold
Associate General Counsel, Labor & Employment Law

MAR 2 2004

004-147

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

333 John Carlyle Street, Suite 200 • Alexandria, Virginia 22314 • (703) 548-3118 • FAX (703) 548-3119 • www.agc.org

RALPH W. JOHNSON, President ROBERT J. DESJARDINS, Senior Vice President LARRY C. GASKINS, Vice President
FRANCIS W. MADIGAN, JR., Treasurer
STEPHEN E. SANDHERR, Executive Vice President & CEO DAVID R. LUKENS, Chief Operating Officer

October 20, 2000

T. Michael Kerr, Administrator
Wage and Hour Division
Room S-3018
Employment Standards Administration
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Re: Notice of Proposed Rulemaking on the Labor Standards Provisions Applicable to Contracts Covering Federally Financed And Assisted Construction; 29 CFR Part 5 (65 FR 57270, 9/21/00)

Dear Mr. Kerr:

The Associated General Contractors of America, Inc. (AGC) is a national trade association of more than 33,000 firms, including 7,500 of America's leading general construction contractors. These firms are engaged in the construction of the nation's commercial buildings, shopping centers, factories and industrial facilities, warehouses, highways, bridges, tunnels, airports, water works facilities, waste treatment facilities, dams, water conservation projects, defense facilities, multi-family housing projects and residential site preparation and utilities installation. Many AGC members perform work subject to the Davis-Bacon Act.

AGC commends the Department of Labor for its interest in conforming the Davis-Bacon implementing regulations at 29 CFR Part 5.2(j) and Part 5.2(l) with the court decisions on material delivery and the statutory boundaries of the "site of the work." Unfortunately, AGC does not believe that the proposals respect the limitations imposed by the statute and affirmed by the courts. AGC opposes the proposed amendments and recommends that they be withdrawn for the following reasons:

MAR 2 2004

- The proposals do not limit prevailing wage coverage to those "employed directly upon the site of the work" as required by the Davis-Bacon Act and affirmed by the court of appeals decisions in *Midway Excavators, Ball, Ball & Brosamer, Inc.* and *L.P. Cavett Company*;

- The proposals would establish unlawfully vague standards for determining when delivery truck drivers or off-site locations would be subject to the Davis-Bacon Act; and

- Whether the Davis-Bacon Act should apply to off-site locations or activities is a policy decision that Congress has reserved the discretion and authority to make.

AGC recommends that the Department of Labor withdraw the proposals and propose amendments to 29 CFR Part 5.2(j) and Part 5.2(l) that:

- Exempt delivery truck drivers from Davis-Bacon coverage; and

- Precisely and objectively define the "site of the work" to cover only those facilities, laborers and mechanics that are either (1) located or employed directly upon the physical site of the public building or public work under construction, or (2) employed at a facility equal to or smaller in size than the public building or public work under construction that is also dedicated and contiguous to the public building or public work under construction.

Following are AGC's specific comments on the proposals.

Coverage of Material Supply and Transportation [29 CFR Part 5.2(j)]

Material Delivery Truck Drivers

AGC opposes the proposed amendment to 29 CFR Part 5.2(j). AGC agrees that, as a general matter, the transportation of materials occurring off the actual construction site is not "directly upon the site of the work" and not subject to the Davis-Bacon Act.

The problem is that the proposed amendment would perpetuate the policy underlying the 1992 amendment to § 5.2(j). Truck drivers transporting material to or from the "site of the work" (as defined in the proposed amendment) would continue to be subject to Davis-Bacon coverage. AGC believes that this is inconsistent with the Act and the court of appeals decision in *Midway Excavators*. There is no support in the *Midway* decision for the policy articulated in the proposed amendment. The court held as a general principle that:

> [T]he Act covers only mechanics and laborers who work *on the site* of the federally-funded public building or public work, not mechanics and laborers employed off-site, such as suppliers, materialmen, and material delivery truck drivers, regardless of their employer. . . . Material delivery truck drivers who come onto the site of the work merely to drop off construction materials are not covered by the Act even if they are employed by the government contractor . . . 29 CFR 5.2(j), insofar as it includes off-site material delivery truck drivers in the Act's coverage, is invalid.

Building and Construction Trades Department, AFL-CIO v. U.S. Department of Labor Wage Appeals Board and Midway Excavators, Inc., 932 F.2d 985, 992. (D.C. Cir. 1991).

The court unequivocally stated that the Davis-Bacon Act does not apply to material supply or material supply truck drivers, and that 29 CFR 5.2(j) is invalid to the extent that it includes off-site drivers. The Department notes the court's holding in its comments on the proposal but inexplicably states that "no further rulemaking on this issue is necessary or appropriate," then proposes amendments to § 5.2(j) that contradict the court and the statute.

The truck drivers included in the proposed amendment are not employed on-site as defined by the statute and affirmed by the court, and they do not perform the work of a "laborer or mechanic." The fact that they spend time on the construction site during the performance of their job is not relevant under the *Midway* decision. Their job is composed of deliveries to, and hauling from, the construction site. They are not "employed" on it. Accordingly, 29 CFR 5.2(j) should be amended to exclude material and supply truck drivers from prevailing wage coverage while engaged in activities associated with the delivery of material to the site or the hauling of material from the site, regardless of who employs them and regardless of how much time they spend on-site engaged in these activities.

***De Minimus* Threshold**

The Department advises that it believes that material supply truck drivers must be paid Davis-Bacon prevailing wages "for any time spent on-site which is more than *de minimus.*" (65 FR 57272). The Department does not define this term or offer any guidance on its interpretation or application, other than to observe that the drivers in the *Midway* case were not usually on the site for more than ten minutes.

AGC does not believe that any threshold is necessary, appropriate or supportable under the *Midway* decision. The *Midway* court focused on what work is performed and where it is performed. In order to be subject to Davis-Bacon coverage, truck drivers must be employed on the site as laborers or mechanics. Truck drivers employed to haul material to or from a federal construction project are not employed on the site and do not usually perform any work on the site outside the delivery/hauling function.

Assuming, only for purposes of discussing the Department's proposal, that Davis-Bacon coverage of material delivery truck drivers is appropriate, AGC does not believe that the *de minimus* threshold is a permissible or acceptable standard to determine this coverage. It is subjective, vague and ambiguous. It does not fairly advise contractors or contracting agencies of the standards with which they are expected to comply.

Government mandates regulating business must provide the kind of notice that will enable the regulated industry to understand what conduct is required or prohibited. Likewise, they may not authorize or encourage arbitrary or discriminatory enforcement. *City of Chicago v. Morales*, 527 U.S. 41, 119 S.Ct. 1849 (1999); *Forsyth County, Georgia v. The Nationalist Movement*, 505 U.S. 123, 112 S.Ct. 2395 (1992). With respect to Department of Labor regulations, the U.S. Court of Appeals for the District of Columbia Circuit has explained that:

> In order to satisfy constitutional due process requirements, regulations must be sufficiently specific to give regulated parties adequate notice of the conduct they require or prohibit. . . . Accordingly, regulations will be found to satisfy due process so long as they are sufficiently specific that a reasonably prudent person, familiar with the conditions the regulations are meant to address and the objectives the regulations are meant to achieve, would have fair warning of what the regulations require.

Freeman United Coal Mining Company v. Federal Mine Safety and Health Review Commission and Secretary of Labor, 108 F.3d 358, 361 (D.C. Cir. 1997).

The Department's proposal fails to meet this standard. Nothing in the proposed amendment to § 5.2(j) would even apprise contractors or contracting agencies of the existence of a *de minimus* standard. Likewise, the proposal does not even suggest incorporating objective standards or factors into the amended regulation that would allow affected parties to determine whether it applied to their performance of a federally financed construction project. For this reason, the proposal is unconstitutionally vague and violates the Due Process Clause.

Assuming, only for the purposes of discussing the Department's proposal, that any threshold for material delivery and hauling truck drivers is appropriate, AGC believes that the Department is legally obligated to propose a clear and quantifiable standard. The standard must permit contractors and contracting agencies to accurately determine the amount of time such drivers are subject to the Davis-Bacon Act in advance of bidding or performing work on a federally financed construction project.

AGC agrees that any occupational classification employed on the site to perform the work of a laborer or mechanic is covered, but only if the amount of time spent on site engaged in this work is substantial. This is consistent with the 20 percent threshold imposed by the Department in other contexts. Foremen and supervisors who spend more than 20 percent of their time on the site performing the work of a construction laborer or mechanic are subject to coverage for the time so spent. *Davis-Bacon and Related Acts Prevailing Wage Resource Book* (1998). However, this coverage is triggered by the work they perform on site, not their mere physical presence on the site.

With respect to the threshold for determining coverage of material delivery and hauling activities performed by truck drivers, AGC believes that a 50 percent threshold is appropriate. The *Midway* court noted that the drivers at issue in that case spent only 10 percent of their workday on the site and that no one argued that this "brief period" was sufficient to trigger coverage (932 F.2d at 989, n. 5).

A 50 percent threshold would be consistent with the court's characterization of the small amount of time that was spent on-site by *Midway* drivers and with its focus on the requirement that an individual must be employed on the site before coverage can be imposed. Only the time that actually exceeds a 50 percent threshold in a workweek and is spent performing the nonexempt work of a laborer or mechanic should be compensated at prevailing wage rates.

004-147

Coverage of the Site of the Work [29 CFR Part 5.2(l)]

Court Decisions

It is important to note that the judicial discussions of the boundaries of the "site of the work" began with the *Midway* court. The court examined the phrase "mechanics and laborers employed directly upon the site of the work" in § 276 (a)(a) of the Davis-Bacon Act and concluded:

> We find no ambiguity in the text: "site of the work" clearly connotes to us a geographic limitation. Thus, the ordinary meaning of the statutory language is that the Act applies only to employees working directly on the physical site of the public building or public work under construction. 932 F.2d at 990.

The statutory boundaries of the Act and the phrase "employed directly upon the site of the work" were again at issue in *Ball, Ball & Brosamer, Inc. v. Reich*, 24 F.3d 1447 (D.C. Cir. 1994). The court rejected the Secretary of Labor's policy arguments contending that a "broad construction" of the Act was justified and necessary to accomplish its "remedial purposes," concluding, "None of this offers any justification for ignoring the clear language of the Act." 24 F.3d at 1452. The court then held that:

> In the end, we reach the same conclusion we did in *Midway*. The statutory phrase "employed directly upon the site of the work," means "employed directly upon the site of the work." Laborers and mechanics who fit that description are covered by the statute. Those who don't are not. 24 F.3d at 1453.

As the Department's proposal notes, the court did observe in *dicta* that the regulation at § 5.2(l)(1) might satisfy the geographic limiting principle of the Davis-Bacon Act if it were applied only to "batch plants and gravel pits located in actual or virtual adjacency to the construction site." 24 F.3d at 1452. The court did not define this term and declined to express an opinion on the validity of such an application. However, the court did state that:

> Instead, the Secretary attempts to find any tiny crack of ambiguity remaining in the phrase "directly upon the site of the work" and cram into it a regulation that encompasses other sites miles from the actual location of the public work – in this case two miles, in another as much as 24 miles and in still another, 3,000 miles from the actual construction location. 24 F.3d at 1452.

The U.S. Court of Appeals for the Sixth Circuit adopted the reasoning and conclusion of the *Ball* decision in *L.P. Cavett Company v. U.S. Department of Labor*, 101 F.3d 1111 (6th Cir. 1996). The magistrate judge had characterized the phrase "directly upon the site of the work" as ambiguous because in constructing a highway it was necessary that the work would "spill over onto nearby areas" not occupied by the final construction work. 101 F.3d at 1114. The court rejected this characterization, holding that:

> [T]he language of the Davis-Bacon Act is not ambiguous. . . . The statutory phrase "employed directly upon the site of the work" means that only employees working directly on the physical site of the public work under construction have to be paid prevailing wages. 101 F.3d at 1115.

The Sixth Circuit also addressed another issue pertinent to the Department's proposed amendments to § 5.2(l)(1) and (2). The court rejected the Department's argument that the asphalt batch plant at issue in the case was in "actual or virtual adjacency" to the Davis-Bacon construction because it was three miles away from a ten mile long highway project. According to the court:

> In our view it is not unreasonable to conclude that while a facility in virtual adjacency to a public work site might be considered part of that site, a facility located two (or in this case three) miles away from the site would not.
>
> Moreover, if the geographic proximity of the Davis-Bacon Act were expanded in the manner advocated by the Department of Labor, we would create the difficult problem of determining which off-site workers were indeed closely enough "related" to the public site to justify inclusion under the Act. The *Ball* court noted as much when it stated, "[T]he Secretary attempts to find any tiny crack of ambiguity remaining in the phrase 'directly upon the site of the work.'" 101 F.3d at 1115.

With respect to the parameters of the site of the work, the *Midway, Ball* and *Cavett* decisions established that:

- The Davis-Bacon Act applies only to those laborers and mechanics employed directly on the physical site of the public building or public work under construction;
- The functional test of the implementing regulation at § 5.2(l)(1) is invalid to the extent that it purports to include "dedicated" but off-site facilities within Davis-Bacon coverage; and
- Off-site facilities that are "in actual or virtual adjacency [within two miles] to the construction site" may be covered.

Department of Labor Site of the Work Proposal

The Department's proposed amendments to § 5.2(l)(1) and (2) ignore the geographic boundaries established by the statute and affirmed by the courts. The Department proposes to redefine the site of the work to include locations "where any significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the contract or project," as well as material supply and other facilities that are dedicated exclusively, or nearly so, to the project and are "adjacent or virtually adjacent to the 'site of the work.'"

The Department proposes a new test to reach off-site locations beyond the "adjacent or virtually adjacent" range. Locations performing a "significant portion" of the "building or work" and established for the performance of the project would be characterized as "secondary locations" of construction, avoiding the restriction of coverage to the public building or public work under construction articulated by the courts. Likewise, material supply operations and other locations would continue to be covered if they are (1) dedicated and (2) "adjacent or virtually adjacent" to either the (3) public building or work under construction or (4) an off-site location performing a "significant portion" of the work.

The Department's proposal may actually represent an expansion of coverage beyond the current language of § 5.2(l). It would create the possibility that off-site facilities supplying or supporting other off-site facilities may be subject to Davis-Bacon coverage in an endless chain, regardless of their location or distance from the construction site. This is precisely the effect identified and rejected by the D.C. Circuit in its observation about the Secretary's "attempts to find any tiny crack of ambiguity remaining in the phrase 'directly upon the site of the work.'" Likewise, the Sixth Circuit rejected this kind of geographic expansion of the Act when it noted the D.C. Circuit's observation and "the difficult problem of determining which off-site workers were indeed closely enough 'related' to the public site to justify inclusion under the Act" if this kind of test were permitted.

The Department advises that it believes that the court decisions do not "preclude Davis-Bacon coverage where significant portions of projects, such as bridges and dams, are actually being constructed at secondary locations." In fact, the decisions do exactly that. Neither the Davis-Bacon Act nor the court decisions on this issue permit or support the extension of prevailing wage coverage to those who are not "employed directly upon the site of the work." As unequivocally explained by the courts, this phrase includes only those working directly on the physical site of the public building or public work under construction. It does not include off-site locations or facilities, even if they are "dedicated" to that work, "established specifically" for the performance of the work or perform a "significant portion" of the work.

The Department's undocumented beliefs about "situations" that "warrant coverage" and the effect of "the literal application of the regulatory language" are policy judgments that Congress has already addressed and, as the D.C. Circuit noted, offer no justification for ignoring the statute. The Department's proposal is devoid of any legislative, regulatory or legal analysis explaining or supporting the Department's authority to create new categories of coverage under the Davis-Bacon Act that include facilities and activities beyond those located and performed directly on the physical site of the public work. Congress knows what language to use if it wants the Davis-Bacon Act to apply to off-site locations or activities. It has not done so and, as the D.C. Circuit concluded in *Ball,* "An agency can neither adopt regulations contrary to statute, nor exercise powers not delegated to it by Congress." 24 F.3d at 1450.

The Department's proposal with respect to the definition of the site of the work is a policy judgment beyond the authority of the Department of Labor. Whether or not the Davis-Bacon Act should apply to off-site locations and activities is the prerogative of Congress to decide. Many bills have been introduced that presented Congress with the opportunity to expand

the Act's coverage in the manner proposed by the Department, and each time Congress has declined [e.g., HR 967 (1995), HR 2042/S.916 (1993), HR 1231 (1993), HR 1987 (1992)]. The responsibility to administer the Davis-Bacon Act does not include the authority to originate prevailing wage policy or to administer the Act or its implementing regulations in ways that contradict the law and federal appellate court decisions.

AGC also believes that the Department's "site of the work" proposal suffers from the same deficiencies as its proposal on the coverage of material supply truck drivers. Like the *de minimus* threshold proposed for material delivery truck drivers, the site of work proposal would create new, undefined tests for coverage.

The proposal would cover sites where a "significant portion" of the building or work is "constructed" if the site is "established specifically for the performance of the contract or project." In addition, locations and operations that are "dedicated exclusively, or nearly so" and are "adjacent or virtually adjacent" to these sites would also be subject to Davis-Bacon Act coverage.

Again, none of these terms are defined and no guidance is offered that would allow a contractor or contracting agency to definitively determine whether an off-site location or activity is subject to the Act. For example, what is a "significant portion?" Is it a certain percentage of the value of the construction contract or a certain percentage of the volume of the construction work? What is the percentage or other test that would trigger coverage? Is a facility established to serve federal and private construction projects "established specifically" or "dedicated exclusively, or nearly so" to federal construction and subject to coverage? What threshold or other factors would be used for this determination? Is a facility located two miles away from of a Davis-Bacon construction site "adjacent or virtually adjacent" to it? What is the geographic range of this concept?

Like the *de minimus* test, the site of work proposal does not provide the regulated community with notice of what activities or locations are subject to Davis-Bacon coverage or a methodology for determining coverage. It creates undefined, subjective terms and conditions and provides no guidance on their application or interpretation. And, like the *de minimus* test, it too is unconstitutionally vague and violates the Due Process Clause.

Conclusion

AGC appreciates the opportunity to comment on the proposed amendments to 29 CFR Part 5.2(j) and 5.2(l). The proposals do not conform to the Davis-Bacon Act or the *Midway, Ball* and *Cavett* decisions. They are also unconstitutionally vague and advance a policy that is beyond the authority of the Department of Labor to originate or impose. AGC opposes the proposals and urges the Department of Labor to withdraw them.

AGC recommends that the Department propose amendments to § 5.2(j) that exempt delivery truck drivers from Davis-Bacon coverage. Likewise, AGC recommends that the Department propose amendments to § 5.2(l) that precisely and objectively define the site of the

004-147

work to cover only those facilities, laborers and mechanics that are either (1) located or employed directly upon the physical site of the public building or public work under construction, or (2) employed at a facility equal to or smaller in size than the public building or public work under construction that is also dedicated and contiguous to the public building or public work under construction.

Sincerely,

William A. Isokait

William A. Isokait
Counsel
Labor & Employment Law

2002-004-149

PLEUNE
Service Company

750 Himes S.E., Grand Rapids, MI 49548-3424 • 616-243-6374 • Fax 616-243-5387
2327 Winters Drive, Portage, MI 49081 • 616-385-6283 • Fax 616-385-2242

February 20, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F St. NW, Room 4035
Washington, D.C. 20405

Re: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by Davis-Bacon Act or related acts, and related matters. 68 Federal Regulation 74403. Pleune Service Company is a HVAC mechanical contractor, which is 100% employee, owned that serves the Western Michigan area along with some accounts in Eastern Michigan.

The council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary work sites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small business. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. On our job we would have in process, we would be incurring approx. $50,000.00 in added cost. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Steve Miedema

Steve Miedema
Pleune Service Company

MAR 2 2004

2002-004-150

Merit Mechanical Inc.

P.O. Box 2109 • 9630 153rd Ave. N.E., Space B1 • Redmond, Washington 98073-2109
(425) 883-9224 • FAX (425) 867-0962 • WA Reg.# MERITMI163CM • OR Reg.# 021242
www.meritmechanical.com

February 23, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street NW, Room 4035
Washington, D.C. 20405

Re: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of the "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. Merit Mechanical, Inc. is a privately owned Mechanical Contractor that has served all of Western Washington and parts of Oregon for 20 years.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. More specifically, the final cost of Merit Mechanical's and other small contractor's projects would be increased by approximately 10%. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Roderick V. Kirkwood

Roderick V. Kirkwood
Merit Mechanical, Inc.

MAR 2 2004

Tom Greenauer
DEVELOPMENT, INC.
SITE CONTRACTOR

P.O. BOX 250
SPRINGBROOK, N.Y. 14140-0250
TELEPHONE 716 675-9434
FAX 716 675-4739

2002-004-151

February 19, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
Washington, DC 20405

RE: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. TOM GREENAUER DEVELOPMENT, INC. is a site contractor, located in Erie County.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on the "site of work" the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. This backpay could run into millions of dollars, putting companies like our out of business. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment

Sincerely,

Norman R. Merriman
President

MAR - 2004

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2002004-152

American Asphalt Company, Inc.

February 23, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

RE: **Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004**

Dear Ms. Duarte,

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. American Asphalt Company, Inc. is an asphalt paving/manufacturing company.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work", the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Robert M. Brown, President
AMERICAN ASPHALT COMPANY, INC.

RMB/mja

MAR 2 2004

116 Main Street • W. Collingswood Heights, New Jersey 08059-1809 • (856) 456-2899 • Fax: (856) 456-4398 • www.americanasphaltcompany.com

IOVINO ELECTRICAL CONTRACTING CO., INC.

365 FAIRVIEW AVENUE,
FAIRVIEW, NEW JERSEY 07022
TEL 201-941-0090 FAX 201-941-5536
LICENSED ELECTRICAL CONTRACTORS-LIC #7268
www.iovinoelectric.com

2002-004-153

February 24, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, NW, Room 4035
Washington, D.C. 20405

Re: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. Iovino Electric is a small, electrical contracting business serving the Bergen County region of New Jersey.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. Small contractors would wholly absorb the cost associated with backpay for secondary sites on on-going projects. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Louis Iovino
President
Iovino Electrical Contracting Co., Inc.

MAR 2 2004

CONTRACTORS NORTHWEST INC.

February 23, 2004

2002-004-154

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

RE: COMMENTS ON PROPOSED RULE REGARDING LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS INVOLVING CONSTRUCTION ("SITE OF THE WORK") FAR CASE NO. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. Contractors Northwest, Inc. is a general contractor corporation, with annual revenues of approximately $35 Million serving the greater northwest of the United States.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that cover secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with back-pay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

D. Dean Haagenson
President

MAR 2 2004

ASSOCIATED BUILDERS AND CONTRACTORS, INC.

"Building a **Quality** Future"

3731 N. Ramsey Road • P.O. Box 6300, Coeur d'Alene, ID 83816-1938
(208) 667-2456 • Fax: (208) 667-6388

ACCREDITED QUALITY CONTRACTOR

WA LIC NO. CO-NT-RN-2520H

J.A. PARFREY COMPANY, INC.

CONCRETE CONSTRUCTION

2002-004-155

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F. Street, N.W.
Room 4035
Washington, DC 20405

February 23, 2004

RE: Comments On Proposed Rule Regarding Labor Standards Provision Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg.74403. J.A. Parfrey Co., Inc. is a family owned, cast in place concrete company, Serving Baltimore and Washington area

The council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites Violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of work", the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with back pay for secondary sites on on-going projects would be wholly absorbed by small contractors. The council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

J.A. Parfrey Co., Inc.

James A. Parfrey
President

MAR 2 2004

4407 Philadelphia Road • Aberdeen, Maryland 21001-2604 • (410) 879-5360 • Fax (410) 879-5343 • email: japarfreyco@aol.com

2002-004-156

SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION

1750 New York Avenue, N.W.
Washington, D.C. 20006-5386
Phone: (202) 783-5880
Fax: (202) 662-0895

PATRICK J. RILEY
Counsel

February 20, 2004

General Services Administration
FAR Secretariat (MVA)
ATTN: Laurie Duarte
1800 F Street, NW, Room 4035
Washington, D.C. 20405

RE: Comments to Proposed Rule

Dear Ms. Duarte:

With this letter, the Sheet Metal Workers' International Association (SMWIA) submits its comments to the proposed rule to amend the Federal Acquisition Regulation (FAR) to implement the revised definitions of "construction" and "site of the work" in the Department of Labor (DOL) regulations, as printed in the Federal Register on December 23, 2003.

The proposed revisions to the definitions of construction and site of the work reflect the changes in the DOL regulations which were published as a final rule on December 20, 2000. The DOL changes were made to conform to federal appellate court decisions and subsequent decisions of DOL's Administrative Review Board. Since DOL's final rule became effective on the last day of the Clinton Administration, some federal agencies may have waited to conform their regulations to see if the Bush Administration would attempt to rescind the new regulations. More than three years later, that does not appear to be the case and those agencies have now decided to conform their regulations to reflect the changes in the DOL regulations.

The SMWIA welcomes the proposed rule primarily because it will be consistent with the final rule published by DOL. Moreover, the SMWIA supports the premise that secondary sites used to construct significant portions of a Davis-Bacon covered building or project at the primary site should also be covered by the Davis-Bacon Act. The workers at that secondary site should also be paid the prevailing wages determined by the DOL. The SMWIA, further, supports the proposal that any wage determination for a secondary site shall be posted both at the primary site of the work as well as at the secondary site, including DOL's revised definition of "site of the work."

MAR 2 2004

004-156

We appreciate the opportunity to offer our comments in support of the proposed rule and look forward to the publication of the final rule reflecting no substantive changes from the proposed rule.

Sincerely,

Patrick J. Riley

Patrick J. Riley
Counsel

PJR/pas
cc: Michael J. Sullivan, General President
Charlie Henson, Asst. Dir. of Jurisdiction
Terry Yellig, Esq.

opeiu #2

2002-004-157

WARGO
INTERIOR SYSTEMS, INC. INTERIOR/EXTERIOR CONSTRUCTION One Washington Avenue, Telford, PA 18969 • 215/723-6200
FAX 215/723-0743

February 20, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, DC 20405

Re: **Comments on Proposed Rule Regarding Labor Provisions Applicable to Contracts Involving Construction "Site of Work" FAR Case No. 2002-004.**

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of work" on projects covered by the Davis-Bacon Act or related acts. Wargo Interior Systems is a small, privately held construction company specializing in the commercial installation of acoustical ceilings, metal studs and drywall, with an additional division specializing in the prefabrication of exterior brick back up panels. We serve the areas of southeastern PA, NJ and DE.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of work," the DOL's definition is invalid according to court decisions. The Council has the legal authority to reject the improper expansion of the Davis-Bacon Act.

The retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with back pay for secondary sites on on-going projects would be wholly absorbed by small contractors. Since we prefabricate exterior panels in our shop and then transport them to job sites the added costs for back pay and transportation would affect us directly. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Very truly yours,

Stephen J. Wargo
President

SJW:fk

MAR 2004

2002-004-158

FRP WALLS • FLOORS • TOILET PARTITIONS • SCAFFOLDING • BLINDS • INSULATION

ERCO Interior Systems, Inc.

P.O. BOX 567 / GLASSBORO, NEW JERSEY 08028 / PHONE 856-881-4200

www.ERCOonline.com

February 17, 2004

Ms. Laurie Duarte
General Services Admin.
FAR Secretariat
1800 F Street, NW, Rm. 4035
Washington, DC 20405

Re: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work")
FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters, 68 Fed. Reg. 74403. ERCO is a family owned, contractor in South Jersey servicing the Tri-State area.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of the work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work", the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provision of the proposal would be devastating to federal contractors, particularly small businesses. Small contractors would, wholly absorb the cost associated with backpay for secondary sites for on-going projects. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Richard E. Sykora
President
ERCO Interior Systems, Inc.

RES/cd

MAR 2 2004

2002-004-159

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, NW, Room 4035
Washington, D.C. 20405

Reference: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

We appreciate the opportunity to express our comments on the FAR Council's proposed rule regarding the definition of "site of work" on projects covered by the Davis-Bacon Act or related acts, and related matters. Bart's Electric is a family owned electrical contractor serving the Kansas City area as well as the surrounding areas, both in Missouri and Kansas.

This company does not believe that the council should extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act.

The retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses since the backpay for secondary sites on on-going projects would be wholly absorbed by small contractors.

Sincerely,

Bart Walker
Bart's Electric
1001 Swift
North Kansas City, Mo. 64116

MAR - 2002

2002-004-160

"Lori Hall" <doubleh649@earthlink.net>

03/01/2004 03:31 PM
Please respond to doubleh649

To: farcase.2002-004@gsa.gov
cc:
Subject: re: FAR case 2002-004

I am writing to urge the Federal Acquisition Regulation Council to adopt the proposed rule to require construction contractors to pay Davis-Bacon Act prevailing wages at secondary worksites. As a member of the central Ilinois construction community, during the last decade I have personally observed a perversion of the Davis-Bacon Act by many unscrupulous contractors. More and more, ratherthan pay mandated DBRA wages, these companies simply set up a site a mile down the road to fabricate portions of public works construction projects historically performed on site. Even though these secondary sitres are set up to prefabricate parts for the primary project, these contractors claim to be exempt from prevailing wages for this fabriaction and for the transportation to the primary site. This loophole should not be allowed to continue, as being against the intent of the Davis-bacon Act, and being against public policy aswell. If an asphalt or concrete plant is set up to serve ! a large highway project, the question of proximity to the project should have no bearing on the wages paid. The intent of the Davis-Bacon Act is clearly being circumvented through this manipulation, and could be quickly clarified by adoption of the proposed rules. Thank you for your consideration. Dave Hall

Lori Hall
doubleh649@earthlink.net

GSA

MAR 4 2004

GSA Office of Governmentwide Policy

MEMORANDUM FOR RONALD POUSSARD
DIRECTOR
DEFENSE ACQUISITION REGULATIONS COUNCIL

FROM: RODNEY P. LANTIER, DIRECTOR
REGULATORY AND FEDERAL ASSISTANCE
PUBLICATIONS DIVISION Rodney P. Lantier

SUBJECT: FAR Case 2002-004, Labor Standards for Contracts Involving Construction

Attached are additional comments received on the subject FAR case published at 68 FR 74404; December 23, 2003. The comment closing date was February 23, 2004.

Response Number	Date Received	Comment Date	Commenter
2002-004-161	03/03/04	No Date	Town Center Electric, Inc.
2002-004-162	03/03/04	02/17/04	Mills Electrical Contractors
2002-004-163	03/03/04	02/19/04	Mundy Electric
2002-004-165	03/03/04	02/20/04	Hall SheetMetal Works, Inc.
2002-004-166	03/03/2004	02/21/04	Randall Industries
2002-004-167	03/03/04	02/19/04	Tom Greenauer Development, Inc.

U.S. General Services Administration
1800 F Street, NW
Washington, DC 20405-0002
www.gsa.gov

Response Number	Date Received	Comment Date	Commenter
2002-004-168	03/22/04	03/04/04	DURR Heavy Construction
2002-004-169	03/22/04	03/11/04	EE Reed Construction
2002004-170	03/22/04	03/04/04	EMC

Attachments

Attachments

2003-004-161

Town Center Electric, Inc.

21297 Hilltop St. Southfield, MI 48034
(248) 355-1600 Fax (248) 355-9795

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. Town Center Electric is a small electrical contractor with ten employees serving southeastern Michigan.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Beacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with back pay for secondary sites on on-going projects would be wholly absorbed by small contractors. The cost for work at a local high school to meet such a requirement would run an additional $36,000.00. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Kerry Albrecht
Project Manager
Town Center Electric

MAR 3 2004

Mills
Electrical Contractors
An Integrated Electrical Services Company

2002-004-162

February 17, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W.
Room 4035
Washington, D.C. 20405

Re: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work) FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. Mills Electrical Contractors is a wholly owned subsidiary of Integrated Electrical Services (IES) and has four operating locations in Texas. For 30 years, Mills has successfully completed a wide range of projects and last year's annual revenue was $144M.

I believe the Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council clearly intends to follow the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. In our own case, these expenses would easily mount to the mid six-figure range. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Alan Linder

Alan Linder
President

MAR 3 2004

P.O. Box 59186 Dallas, Texas 75229 214.357.4300 Fax 214.956.0691
www.millselectrical.com

MUNDY Electric

Quality Installations Since 1959

720 E. Walnut Avenue • Fullerton, CA 92831-4530 • (714) 578-8896 • Fax (714) 578-8899

2002-004-163

February 19, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F. Street, N.W., Room 4035
Washington, D.C. 20405

RE: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 fed. Reg. 74403. Mundy Electric is an Electrical Contractor.

The council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. The council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,
MUNDY ELECTRIC

Mike Mundy
President

MAR 3 2004

2002-004-165

HALL SHEETMETAL WORKS, INC.
Post Office Box 930
11 River Street
Middleton, MA 01949
978-739-3800

February 20, 2004

General Services Administration
FAR Secretariat (MVA)
1800 F Street, NW, Room 4035
Washington, D.C. 20405
Attn: Laurie Duarte

Re: FAR case 2002-004

Dear Ms. Duarte:

We are a non-union heating and ventilation contractor and have been engaged in file-sub bids for many years. As you probably know, in Massachusetts prevailing wages need to be paid when working on government and municipal jobs.

The only way that we are able to be competitive is through the fabrication in our shop, which does not need to be prevailing wage. Just the same, our workers are paid well and have many benefits.

Some of us feel that the Davis-Bacon act was probably a good idea at the time, but has gone beyond its usefulness. Organized labor represents a very small percentage of our country's work force, but because non-union shops have to pay prevailing wages to insure that we will not be serious competition to the unions, the cost of building for Government and municipalities has gone out of sight and is hurting the taxpayer.

We strongly urge you and your committee not to expand the Davis-Bacon. We believe that this is a very big factor in the loss of jobs in this country. We just cannot compete anymore. The unions in this state have the politicians in the palm of their hands and they certainly do not need anymore leverage.

Thank you for the opportunity to express my thoughts. Please consider my concerns.

Very truly yours,

Gordon R. Hall

Gordon R. Hall, President

MAR 3 2004

RANDALL INDUSTRIES

2002-004-166

February 21, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, NW, Room 4035
Washington, D.C. 20405

Ref.: Comments on proposed Rule Regarding labor Standards Provisions applicable to Contracts Involving Construction (Site of the Work) FAR Case 2002-004

Dear Ms. Duarte:

Thanks you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related act, and related matters. 68 Fed. Reg. 74403. Randall Industries is a privately owned company in metro Chicago with annual sales of $5.5 million.

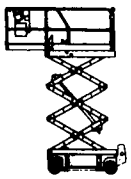
The Council should not extend the coverage of the Davis Bacon Act's prevailing wage requirements to secondary worksites. The proposed rules additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work", the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act. Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with back pay for secondary sites on on-going projects would be wholly absorbed by small contractors. The depth of damage would be incalculable. The Council must fully comply with the regulatory Flexibility act and conduct an analysis of the cost of this rule to small business and publish it for public comment.

Sincerely,

Randall Truckenbrodt

Randall Truckenbrodt
President

MAR 3 2004



RANDALL INDUSTRIES, INC.
741 South Route 83 • Elmhurst, Illinois 60126
Phone: (630) 833-9100 • Toll Free: (800) 966-7412 • Fax: (630) 833-9108
www.randallind.com

Tom Greenauer
DEVELOPMENT, INC.
SITE CONTRACTOR

2002-004-167

P.O. BOX 250
SPRINGBROOK, N.Y. 14140-0250
TELEPHONE 716 675-9434
FAX 716 675-4739

February 19, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
Washington, DC 20405

RE: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. TOM GREENAUER DEVELOPMENT, INC. is a site contractor, located in Erie County.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on the "site of work" the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. This backpay could run into millions of dollars, putting companies like our out of business. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment

Sincerely,

Charles E. Bowen

Charles E. Bowen
Vice President / Secretary

F:\KELLY\political ltr\Laurie Duarte 021904.doc

2002-004-168

March 4, 2004

Ms. Laurie Duarte
General Services Administrator
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

RE: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction ("site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Reg. 74403. Durr Heavy Construction, LLC is a family owned and operated construction company specializing in demolition, site preparation and underground utilities. Durr performs approximately 17 million dollars worth of work in the New Orleans area each year.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to the extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small business and publish it for public comment.

Sincerely,

S. F. Stumpf

Stephen F. Stumpf
CEO
Durr Heavy Construction, LLC

DURR HEAVY CONSTRUCTION LLC

Site Preparation
Demolition
Utilities

817 Hickory Avenue
Harahan, LA 70123
504.737.3205
www.durrhc.com

2002-004-169

EEREED
CONSTRUCTION, L.P.

March 11, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

Re: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contacts Involving Construction ("Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of the work" on projects covered by the Davis-Bacon act or related acts, and related matters. 68 Fed. Reg. 74403. E. E. Reed Construction, L.P. is a privately owned commercial general contractor with an annual volume of approximately $200 Million. Our firm constructs light industrial, office building, parking garages, religious and institutional projects in Texas, the Mid-Atlantic region and the Southern California geographic areas.

The council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of his proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Jim Owrey
Executive Vice President
E. E. Reed Construction, L.P.

JO\jb

jro\FAR ltr 3-11-04

333 Commerce Green Boulevard P.O. Box 108 Sugar Land, Texas 77487-0108 281.933.4000 (voice) 281.933.4852 (fax)

2002-004-170

EMC

1802 Ellen Road
P.O. Box 6328
Richmond, Virginia 23230
804-359-9624
Fax: 804-359-9634

March 4,2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

RE: Comments on Proposed Rule Regarding Labor Standards Provisions Applicable to Contracts Involving Construction (Site of the Work") FAR Case No. 2002-004

Dear Ms. Duarte:

Thank you for the opportunity to submit comments on the FAR Council's proposed rule regarding the definition of "site of work" on projects covered by the Davis-Bacon Act or related acts, and related matters. 68 Fed. Re. 74403. EMC Company is a small Mechanical Contractor based out of Richmond, VA.

The Council should not extend the coverage of the Davis-Bacon Act's prevailing wage requirements to secondary worksites. The proposed rule's additional definition of "site of work" that covers secondary sites violates settled court decisions concerning the proper geographic scope of the Davis-Bacon Act. While the Council claims to be following the Department of Labor's definitional rules adopted in 2000 on "site of the work," the DOL's definition is invalid according to extensive court decisions. The Council has the discretion and legal authority to reject the improper expansion of the Davis-Bacon Act.

Moreover, the retroactive provisions of this proposal would be devastating to federal contractors, particularly small businesses. The cost associated with backpay for secondary sites on on-going projects would be wholly absorbed by small contractors. The Council must fully comply with the Regulatory Flexibility Act and conduct an analysis of the cost of this rule to small businesses and publish it for public comment.

Sincerely,

Edward J. Davenport
President